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Filing date: **11/05/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

| | |
|---------------------------|--|
| Proceeding | 91204777 |
| Party | Plaintiff Apple Inc. |
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| Signature | /Allison Scott Roach/ |
| Date | 11/05/2013 |
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. **85/379,097**

For the mark: **CRAPPLE**

Filed: July 22, 2011

Published: December 20, 2011

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|---------------------|---|-------------------------|
| -----X | | |
| APPLE INC., | : | |
| | : | Opposition No. 91204777 |
| Opposer, | : | |
| | : | |
| v. | : | |
| | : | |
| NINJA ENTERTAINMENT | : | |
| HOLDINGS, LLC, | : | |
| | : | |
| Applicant. | : | |
| -----X | | |

OPPOSER’S NINTH NOTICE OF RELIANCE

Opposer Apple Inc. (“Apple”), pursuant to 37 C.F.R. § 2.120(j)(1), submits of record in connection with this opposition proceeding a copy of certain portions of the August 5, 2013 discovery deposition and accompanying exhibits of Milton Isaac Barr, founder and owner of Applicant Ninja Entertainment Holdings, LLC (“Applicant”). These portions of Mr. Barr’s discovery deposition and the accompanying exhibits are relevant to the issues of likelihood of confusion and dilution and show, among other things, Applicant’s organization, operations, and business; the priority of Apple’s Marks; the fame of Apple’s marks and of Apple’s goods and services offered under its marks; Applicant’s awareness of Apple’s marks; Applicant’s claims regarding the selection and adoption of the mark at issue in this opposition proceeding (“Applicant’s Mark”); Applicant’s use and intended use of Applicant’s Mark; Applicant’s knowledge of communications, suggestions, or inquiries regarding an association, connection, or

affiliation between Applicant, Applicant's Mark, or Applicant's goods and services, on the one hand, and Apple, Apple's marks, or Apple's goods and services, on the other hand; the relationship between Apple's goods and services and Applicant's goods/services offered and intended to be offered under Applicant's Mark; and Applicant's lack of a bona fide intent to use Applicant's Mark in connection with certain goods.

Respectfully submitted,

Dated: November 5, 2013

KILPATRICK TOWNSEND & STOCKTON LLP

By: /s/Allison Scott Roach

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Attorneys for Opposer Apple Inc.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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| NINJA ENTERTAINMENT | : | |
| HOLDINGS, LLC, | : | |
| | : | |
| Applicant. | : | |
| -----X | | |

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been served on Ninja Entertainment Holdings, LLC by depositing a copy with the United States Postal Service as First Class Mail, postage prepaid, in an envelope addressed to:

Daniel Kelman
1934 Josephine Street
Pittsburgh, Pennsylvania 15203

This the 5th day of November, 2013.

/s/ Alberto Garcia
Alberto Garcia

EXHIBIT A

IN THE UNITED STATES PATENT AND
TRADEMARK OFFICE BEFORE THE TRADEMARK
TRIAL AND APPEAL BOARD

- - - - -

In the Matter of)
Application Serial)
No. 85/379,097)
For the mark: CRAPPLE)
Filed: July 22, 2011) Opposition
Published: 12-20-11) No. 91204777

APPLE, INC.,)

Opposer,)

vs.)

NINJA ENTERTAINMENT)
HOLDINGS, LLC,)

Applicant.)

- - - - -

DEPOSITION OF MILTON ISAAC BARR

- - - - -

August 5, 2013

- - - - -

DEPOSITION OF MILTON ISAAC BARR

a witness herein, called by the Opposer for
examination, taken pursuant to the Federal
Rules of Civil Procedure, by and before
Vivian D. Macurak, a Professional Court
Reporter and Notary Public in and for the
Commonwealth of Pennsylvania, at the law
offices of McGuire Woods, LLP, EQT Plaza,
625 Liberty Avenue, 23rd Floor, Pittsburgh,
Pennsylvania 15222-3142, on Monday, August 5,
2013, at 11:35 a.m.

- - - - -

COUNSEL PRESENT:

For the Opposer:

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danielkelman@gmail.com

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I N D E X

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WITNESS: MILTON ISAAC BARR

E X A M I N A T I O N :

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BY MS. ROACH

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P R O C E E D I N G S

- - - - -

MS. ROACH: Good morning. My name is Allison Roach, and I represent Apple, Inc. in an opposition that has been filed for the Trademark Trial and Appeal Board against Ninja Entertainment Holdings, LLC concerning the trademark Crapple. Apple, Inc. noticed this deposition of Milton Barr for 9:00 a.m. eastern on August 5, 2013 at the law offices of McGuire Woods, LLP at 625 Liberty Avenue, 23rd Floor, Pittsburgh, Pennsylvania?

On July 31, 2013, counsel for Apple, Inc. served on counsel for applicant the Amended Notice of Deposition of Milton I. Barr testifying at the above referenced date and time for this deposition. Mr. Barr arrived at the deposition location at approximately 11:25 a.m. eastern.

I would also like to note for the record that counsel for applicant, Daniel Kelman, is on the phone with us. He was invited to attend the deposition in person. He did not request permission to attend via telephone, but we are going to proceed with the

1 deposition with him on the phone.

2 - - - - -

3 MILTON ISAAC BARR

4 a witness herein, having been first duly sworn,
5 was examined and testified as follows:

6 - - - - -

7 EXAMINATION

8 BY MS. ROACH:

9 Q. Mr. Barr, if you could state your
10 full name and home address for the record.

11 A. Milton Isaac Barr.

12 MR. KELMAN: Can we also add
13 the reason I'm unable to attend in person is
14 that I am in the Republic of China and it is
15 just not feasible for me to attend.

16 MS. ROACH: Okay.

17 A. My name is Milton Isaac Barr.
18 I live at 1934 Josephine Street, Pittsburgh,
19 Pennsylvania, 15203.

20 Q. How long have you lived there?

21 A. I lived there for a year-and-a-half.

22 Q. Where did you live before that?

23 A. I lived in Lawrenceville.

24 Q. Lawrenceville?

25 A. Pittsburgh. If you look to your

1 right, it is up that way (indicating).

2 Q. Have you ever been deposed before?

3 A. No.

4 Q. Have you ever given testimony in a
5 legal proceeding before?

6 A. Yes.

7 Q. What was that proceeding?

8 A. I had a case with the Teenage Mutant
9 Ninja Turtles.

10 Q. What was the context of the
11 testimony you gave? Was it in court?

12 A. Yes, it was in court.

13 Q. When was that?

14 A. I'm sorry. That is slightly
15 inaccurate. It was with the City of Pittsburgh
16 in around 2009. It was not with the Teenage
17 Mutant Ninja Turtles.

18 Q. What type of proceeding was that?

19 A. It was unauthorization of sign, 118
20 I believe is the city code for it, for painting
21 without the city's permission.

22 Q. But it was a city ordinance issue?

23 A. Yes.

24 Q. And you gave testimony in court?

25 A. Uh-huh.

1 Q. Are there any copies of that
2 testimony?

3 A. Possibly. You would have to check
4 the city court records.

5 Q. You said that was around 2009?

6 A. Uh-huh.

7 Q. Since it has been a little while, I
8 will start off by summarizing the ground rules
9 of a deposition so that we can all make sure we
10 are on the same page. Do you understand that
11 you are under oath?

12 A. Uh-huh.

13 Q. You have just been sworn in by the
14 court reporter. She is taking down everything
15 that is being said today. Do you understand
16 that?

17 A. Uh-huh.

18 Q. The testimony can be used in
19 connection with this proceeding. If you can
20 please give oral answers instead of shaking or
21 nodding your head or saying uh-huh so she can
22 take it down in the record.

23 A. Understood.

24 Q. She can only take down one of us
25 speaking at a same time so I will try my best

1 to wait until you are finished speaking before
2 I begin, and, if you could do me the same
3 courtesy, it will make it much easier for her
4 to take it all down.

5 If you don't understand a question,
6 ask me to restate it. Will you do that?

7 A. Yes.

8 Q. As far as breaks, we will try to
9 take a break every hour or hour-and-a half, but
10 because we have gotten kind of a late start we
11 are going to try to move through this as
12 quickly as possible so we can get this
13 finished, but if you need a break for any
14 reason just let me know. If there is a
15 question pending, you need to answer that
16 question or finish a short line of questions,
17 but after that is finished we can see about a
18 break. Does that sound fair?

19 A. Sounds fair.

20 Q. Do you have any questions about the
21 deposition process before this begins?

22 A. No.

23 MR. KELMAN: Yes. If I have
24 to speak to Milt, is it on the record or is it
25 in confidence?

1 A. Get ready for it.

2 Q. Did you get ready for the
3 deposition?

4 A. I researched what a deposition was.

5 Q. Did you review any documents as part
6 of the preparation for today's deposition?

7 A. No.

8 Q. Did you speak with anyone in your
9 preparation for today's deposition?

10 A. I spoke to Dan about when to be here
11 and the time to be here.

12 Q. Let's start with can you give me a
13 summary of your educational background.

14 A. I have a high school diploma.

15 Q. Where did you attend high school?

16 A. Taylor Alderdice.

17 Q. What did you do after you graduated
18 from high school?

19 A. I opened a small business.

20 Q. What was the name of that business?

21 A. MIB.

22 Q. M --

23 A. Like Men In Black. M-I-B.

24 Q. Do you still operate that business?

25 A. People refer to my current business

1 as MIB, but it is now Ninja Entertainment
2 Holding Company.

3 Q. When did the name of the company
4 change from MIB to Ninja Entertainment Holding
5 Company?

6 A. In 2010.

7 Q. Have you ever had any other jobs or
8 employment to date?

9 A. No.

10 Q. When did you first hear Apple, Inc.?

11 A. Probably like the 28 iPod that came
12 out. That was in 2006.

13 Q. Were you aware of Apple, Inc. prior
14 to 2006?

15 A. I think we used to call them like
16 Macs. The older computers, people referred to
17 them as Macs before. I didn't know it as
18 Apple, Inc.

19 Q. What is the nature of Apple's
20 business?

21 A. They are usually like the first to
22 market consumer technology. Every
23 year-and-a-half they come out with
24 state-of-the-art telephones, laptops, iPods.
25 They also carry different types of accessories,

1 the connector devices.

2 Q. What products is Apple well known
3 for?

4 A. Their three best known items are
5 going to be their iPad, the iPhone, their
6 MacBooks and their iPods.

7 Q. Do you agree that Apple, Inc. and
8 its products are widely known in the United
9 States?

10 A. Uh-huh.

11 Q. Do you agree that the Apple brand is
12 famous in the United States?

13 A. Can you define famous.

14 Q. What does famous mean to you?

15 A. Famous I think typically is more
16 defined as an individual versus a company. I
17 don't think you refer to a company as famous.

18 Q. Would you say that the Apple brand
19 is widely known across the United States?

20 A. Yes.

21 Q. Do you agree that Apple, Inc.'s
22 Apple trademark is well known?

23 A. Yeah.

24 Q. Does Ninja Entertainment own or use
25 Apple products?

1 A. We do.

2 Q. What Apple products does Ninja
3 Entertainment own?

4 A. Ninja Entertainment is in the
5 recommerce business. We allow consumers to
6 donate their previously used goods or sell
7 their previously used goods, and we either
8 repair them, refurbish them or scrap them.

9 When Apple comes out with a new
10 product line every year, people need a place to
11 take their old Apple devices, so typically
12 anything that's a year or two years old
13 consumers take it to us and we resell
14 everything from a first generation iPod to the
15 newest iPod Touch that is currently out.

16 Q. So those are Apple products that you
17 purchase from consumers?

18 A. Uh-huh, similar to like gazelle.com
19 except we have more of a street foundation.
20 People can actually walk into a brick and
21 mortar store and sell their devices.

22 Q. Does Ninja Entertainment own any
23 products that it purchased from Apple?

24 A. No.

25 Q. Do you personally own any Apple

1 products?

2 A. I do.

3 Q. Did you purchase those products from
4 Apple?

5 A. No.

6 Q. Did you purchase those products from
7 consumers who resold their products?

8 A. Not at my location, but, yes, I
9 purchased everything secondhand.

10 Q. Have you ever been in an Apple
11 retail store?

12 A. I have.

13 Q. Have you ever been employed by
14 Apple?

15 A. I haven't.

16 Q. Have you ever been affiliated with
17 Apple in any way?

18 A. I haven't. I think we once looked
19 into being an Apple authorized vendor and it
20 wasn't right for us.

21 Q. Does Ninja Entertainment have any
22 relationship with Apple, Inc.?

23 A. No.

24 Q. Has it ever had any relationship
25 with Apple, Inc.?

1 Instead of us filing a civil claim against the
2 convict and Apple filing a civil claim and
3 neither of us recovering, we chose to settle in
4 that fashion for the convenience of all
5 parties.

6 A. Both the store that received the
7 merchandise and the store that it gets taken
8 from are both put down as victims.

9 BY MS. ROACH:

10 Q. I understand. I'm not going to get
11 into that proceeding. I was trying to clarify
12 the nature of the relationship. I asked if
13 Ninja Entertainment ever had a relationship
14 with Apple, and it sounds like Ninja never had
15 an agreement or an ongoing relationship with
16 Apple, Inc.; is that correct? Mr. Barr, is
17 that correct?

18 A. That's correct.

19 Q. Mr. Barr, have you ever heard anyone
20 use the term Crapple to refer to Apple, Inc.
21 or its products?

22 A. I haven't.

23 Q. Have you ever seen anything online
24 in which someone used the term Crapple to refer
25 to Apple, Inc. or its products?

1 blogs.

2 Q. I'm asking if you ever heard of it?
3 Did someone mention it to you at some point?

4 A. No, I haven't. What is it called?

5 Q. If you don't mind, I'm going to ask
6 the questions unless you need clarification.
7 If I clarify it, will you have a better
8 understanding?

9 A. That's okay.

10 Q. It is Crapple store blog and it was
11 crapplestore.blog..com. Are you familiar with
12 the term Meme?

13 A. No.

14 Q. Have you ever heard of the website
15 Know Your Meme?

16 A. No.

17 Q. It is K-N-O-W, Y-O-U-R, M-E-M-E.
18 We will mark this nine-page exhibit as
19 Exhibit 2.

20 (Barr Exhibit No. 2 was marked
21 for identification.)

22 Q. Mr. Barr, I'm going to show you what
23 has been marked as Exhibit 2. Do you recognize
24 this website?

25 A. I don't recognize the website, but I

1 recognize the face.

2 Q. I will represent to you that this is
3 a printout of the "trollface/coolface/problem?"
4 page from the website knowyourmeme.com. You
5 said you recognize the face that is shown on
6 the first page?

7 A. I do.

8 Q. What is that face?

9 A. I think it is like a sign of --

10 MR. KELMAN: Objection. The
11 use of this face in connection with the Crapple
12 is the subject of the attorney/client
13 privilege.

14 MS. ROACH: I'm not asking
15 that right now, Mr. Kelman. I'm asking about
16 an exhibit that I presented to Mr. Barr.

17 A. I'm pretty sure it is on a deli in
18 Squirrel Hill. It is a kosher deli face. I'm
19 not sure exactly. It seems to be confusing
20 what it is. I saw it like in Occupy Wall
21 Street, and then I also saw it on a small local
22 deli. People seem to use it as a universal
23 logo.

24 Q. What does it mean to you, this image
25 of the face shown in the middle of the first

1 page of Exhibit 2.

2 A. An ugly smiling man. I don't know.
3 I can read about it and tell you. "Trollface
4 is a black and white drawing of a face with a
5 large mischievous grin that is meant to
6 portray" --

7 Q. You are reading from the first page
8 of Exhibit 2?

9 A. Yeah. I'm reading about --

10 Q. It says, "Trollface is a black and
11 white drawing of a face with a large
12 mischievous grin that is meant to portray the
13 expression someone makes while trolling."

14 Do you know what trolling means?

15 A. Please define trolling.

16 Q. I'm asking you if you know what
17 trolling means as it is shown on this exhibit.

18 A. I don't.

19 Q. Okay. The exhibit goes on to say,
20 "Posting a Trollface image into a forum thread
21 is often used to claim that someone was being
22 fooled or intentionally angered. The face
23 commonly appears in rage comics indicating that
24 the character is being mischievous in some
25 way."

1 Would you agree that that is an
2 accurate description of what this trollface
3 image means?

4 A. I don't know. It is the first time
5 I have seen a definition next to the face.

6 Q. Do you associate a meaning with this
7 image?

8 A. I just think it looks funny, like
9 dumbass. I don't know.

10 Q. Would you say this is a widely used
11 image?

12 A. Can you define how big an image has
13 to be to be widely used?

14 Q. That's fair. I will rephrase the
15 question. You mentioned earlier that you have
16 seen this image in different contexts; is that
17 correct?

18 A. Yes.

19 Q. You said you saw it in connection
20 with something to do with Occupy Wall Street;
21 is that correct?

22 A. That's correct.

23 Q. And you saw it used in connection
24 with a deli; is that correct?

25 A. Yes.

1 Q. Was there any relationship between
2 the Occupy Wall Street event that you saw that
3 used this image and the deli that you saw?

4 A. No, there wasn't. One was in New
5 York. One was in Pittsburgh.

6 Q. So do different parties use this
7 image?

8 A. I guess. I have seen two parties
9 use it before.

10 Q. Are you aware that people associate
11 this image with any particular meaning?

12 A. I'm unaware.

13 Q. Is there anywhere else besides the
14 Occupy Wall Street you mentioned and the deli
15 that you mentioned in Pittsburgh where you have
16 seen this trollface image shown on the first
17 page of Exhibit 2?

18 A. I have seen it once before, but I
19 can't recall what it was. There was definitely
20 something it was used for that was relevant,
21 but I can't recall what that was.

22 Q. Is there anything that would help
23 you remember?

24 A. You got a time machine?

25 Q. Any documents that would help you

1 remember?

2 A. No.

3 Q. What is Ninja Entertainment
4 generally speaking?

5 A. If, for example, you needed a loan.
6 You probably have good credit. You went to law
7 school. You could go to a bank and the bank is
8 going to be able to charge you interest and
9 give you money. I deal with people with either
10 poor credit or impoverished and are in a
11 situation where they need cash so they come to
12 us and we let them trade their commodities for
13 cash. So, for example, if you ever wanted to
14 get rid of that ring, we could help you out.
15 You could get a lot of money.

16 Q. So when you say commodities, it is
17 not just electronics?

18 A. It is anything. Everything except
19 cars. You need a special license for that.

20 Q. When I refer to Ninja Entertainment,
21 and you just referred to it in your answer,
22 were you speaking about Ninja Entertainment
23 Holding Company?

24 A. No. Ninja Entertainment has
25 multiple facets to it. It has four LLCs. It

1 has Ninja Entertainment Holdings and then other
2 subsidiaries to that have different functions.
3 The retail locations that purchase are
4 Ninja, LLC 1 and 2.

5 Q. Who owns Ninja, LLC 1 and 2?

6 A. Currently I own 100 percent of
7 Ninja Entertainment.

8 Q. Who owns Ninja Entertainment
9 Holdings, LLC?

10 A. I own 100 percent.

11 Q. Can we agree for purposes of this
12 deposition to refer to Ninja Entertainment
13 Holdings, LLC and the other Ninja Entertainment
14 entities that you own as Ninja Entertainment --

15 A. We can.

16 Q. -- just to make it easier? You said
17 that you currently own 100 percent of Ninja
18 Entertainment. Has it ever been different?

19 A. It has been.

20 Q. How has it been different?

21 A. At a time I had a partner who had
22 25 percent of the company.

23 Q. Who was the partner?

24 A. The partner was Daniel Kelman.

25 Q. When was he a 25 percent partner in

1 Ninja Entertainment?

2 A. So I believe from January 2011 until
3 May 2012.

4 Q. Has anyone else ever had any
5 ownership of Ninja Entertainment?

6 A. No.

7 Q. Did you found Ninja Entertainment?

8 A. I did.

9 Q. Did you found it by yourself?

10 A. No. Well, you are saying like the
11 origin of the company? Initially I had a
12 little bit of help from a couple people.

13 Q. Does Ninja Entertainment have a
14 president?

15 A. It does not.

16 Q. Officers? Does Ninja Entertainment
17 have officers?

18 A. It does.

19 Q. Who are they?

20 A. You would have to talk to the CEO.
21 I handle the operation of the store.

22 Q. Who is the CEO of Ninja
23 Entertainment?

24 A. That is David Villlerdereade.

25 Q. Can you please spell that.

1 A. David, Villderdade. I have to look
2 at my phone to find out how to spell that for
3 you.

4 Q. You can just come close and we can
5 come back to it and correct it later.

6 A. V-I-L-L-D-E-R-D-A-D-E.

7 Q. When did David Villderdade become
8 the CEO of Ninja Entertainment?

9 A. December 2012.

10 Q. Who was the CEO of Ninja
11 Entertainment between May 2012 when you said
12 Daniel Kelman ceased to be the CEO and when
13 David Villderdade became the CEO in
14 December 2012?

15 A. I was.

16 Q. Who was the CEO of Ninja
17 Entertainment before Daniel Kelman?

18 A. I was.

19 Q. Before Daniel Kelman, was anyone
20 other than you the CEO of Ninja Entertainment?

21 A. No.

22 Q. When did you begin to be the CEO for
23 the first time of Ninja Entertainment?

24 A. I guess January 2011.

25 Q. So you were the CEO of Ninja

1 Entertainment from January 2011 until --

2 A. It depends on how you define words,
3 so I was the sole proprietor running the
4 business but I didn't refer to myself as the
5 CEO. I opened the first business in 2006, but
6 I just referred to myself as an owner.

7 Q. I see. Then Daniel Kelman became
8 the CEO in 2011, but before that you had been
9 in the position of running the business?

10 A. I think CEO is a bad word choice to
11 use. We are not really a company of titles, so
12 running the business would be accurate. When
13 we came together, we ran the business together.

14 Q. From January 2011 to May 2012 when
15 earlier you said Kelman was the CEO, Daniel
16 Kelman, you and Daniel Kelman ran the business
17 together during that time?

18 A. In that period I spent a lot of time
19 out of the states. I was actually going back
20 and forth from Pittsburgh to Miami trying to
21 open a business and Pittsburgh to Israel.

22 Q. So Daniel Kelman primarily ran the
23 business from January 2011 to May 2012?

24 A. Both of us did, but he definitely
25 was helpful.

1 Q. In your current position at Ninja
2 Entertainment -- let me back up. What is the
3 title for your current position at Ninja
4 Entertainment if you have one?

5 A. Most people refer to me as the boss.

6 Q. What is your job description? What
7 are your responsibilities?

8 A. I approve payroll, I can hire and
9 fire, and I'm in charge of general operations.

10 Q. Do you have any responsibilities
11 relating to advertising for Ninja
12 Entertainment?

13 A. I do some of the Facebook campaigns.

14 Q. What does that involve? What is
15 your involvement in the Facebook campaigns for
16 advertising for Ninja Entertainment?

17 A. We pretty much take an Xbox 360 and
18 we put a price tag to it. We take an item and
19 put a price on it. That's pretty much it.

20 Q. So you post content on the Facebook
21 wall for Ninja Entertainment?

22 A. Yes.

23 Q. How often do you do that?

24 A. spurts. I will do it for maybe like
25 a week, and then I won't do it for three

1 months.

2 Q. Do you have any other
3 responsibilities with respect to the Facebook
4 page for Ninja Entertainment?

5 A. No.

6 Q. Do you respond to comments on the
7 Facebook page for Ninja Entertainment?

8 A. Sometimes.

9 Q. What are your responsibilities with
10 respect to the trademarks for Ninja
11 Entertainment?

12 A. I don't think we have a trademark.

13 Q. What is Daniel Kelman's current
14 position at Ninja Entertainment?

15 A. None. We sometimes hire him for
16 counsel.

17 Q. He is not currently employed or an
18 officer at Ninja Entertainment?

19 A. No employment or affiliation with
20 Ninja Entertainment.

21 Q. Has that been the case since
22 May 2012?

23 A. Yes.

24 Q. Did Daniel Kelman have any
25 affiliation with Ninja Entertainment prior to

1 January 2011 when you said he became the CEO?

2 A. Yes. He was counsel for Ninja
3 Entertainment with a law office in New York
4 City.

5 Q. What was the name of that law
6 office?

7 A. Robinson Brog.

8 Q. Ninja Entertainment was a client of
9 Robinson Brog?

10 A. It was.

11 Q. When did Ninja Entertainment become
12 a client of Robinson Brog?

13 A. I would say six months prior to
14 January, so we are looking at May.

15 Q. Approximately May 2011 is when Ninja
16 Entertainment became --

17 MR. KELMAN: Objection.
18 Attorney/client privilege as to when we
19 initiated our relationship.

20 MS. ROACH: The fact of the
21 attorney/client relationship is not privileged.

22 MR. KELMAN: We maintain our
23 objection.

24 BY MS. ROACH:

25 Q. From May 2011 until January 2011, is

1 that approximately when Ninja Entertainment was
2 a client of Robinson Brog?

3 A. I'm not really sure. In that time
4 period I wasn't really too focused on Ninja
5 Entertainment.

6 Q. What were you focused on during that
7 time?

8 A. Enjoying myself.

9 Q. Who was running the business during
10 that time? Who was running Ninja Entertainment
11 during that time?

12 A. Nobody. It is kind of like a wheel
13 on tracks. Think of it as a train. People
14 need money. People bring in the stuff. I can
15 leave for a month. Nothing is going to happen.

16 Q. When did Ninja Entertainment cease
17 to be a client of Robinson Brog?

18 A. I'm unsure also. I would say maybe
19 slightly before Dan Kelman joined Ninja
20 Entertainment.

21 Q. When Daniel Kelman joined Ninja
22 Entertainment, you said earlier he joined as
23 the CEO?

24 A. He didn't join exactly as a title.
25 We joined as partners. There wasn't such

1 defined roles.

2 Q. What were Daniel Kelman's
3 responsibilities at Ninja Entertainment from
4 January 2011 until May 2012?

5 A. Practicing Chinese.

6 Q. Did he have any responsibilities
7 with respect to the business of Ninja
8 Entertainment when he was the CEO or your
9 partner as you said from the time of
10 January 2011 to May 2012?

11 A. He was kind of like an office
12 manager and also was in communication with the
13 bookkeepers. I would say he was more of the
14 back end of the business.

15 Q. Could you explain what you mean by
16 back end of the business.

17 A. Typically there is front end and
18 back end. The front end are people who are
19 dealing with clients and making sales, and the
20 back end are people who are taking those
21 numbers from the sales, putting them in order
22 and getting them ready for taxes.

23 Q. Was Daniel Kelman located in
24 Pittsburgh when he worked at Ninja
25 Entertainment from January 2011 to May 2012?

1 A. Sometimes.

2 Q. And then did Daniel Kelman leave
3 Ninja Entertainment in May 2012?

4 A. He did.

5 Q. At that time was he no longer an
6 owner, part owner of Ninja Entertainment?

7 A. Yes.

8 Q. When did Daniel Kelman cease to be a
9 part owner of Ninja Entertainment?

10 A. I'm unsure of the exact date.

11 Q. Could you give an estimate?

12 A. I would say end of May. Somewhere
13 around there.

14 Q. In what year?

15 A. 2012.

16 Q. You mentioned earlier that Ninja
17 Entertainment is in the recommerce business and
18 that you buy and resell all sorts of products.
19 You mentioned that cars are a product that
20 Ninja Entertainment does not sell; is that
21 correct?

22 A. That's correct.

23 Q. But other than that you are open to
24 purchasing and reselling just about anything;
25 is that correct?

1 A. That's correct.

2 Q. Does that include Apple products?

3 A. It does.

4 Q. Does Ninja Entertainment often offer
5 Apple products for sale?

6 A. Can you define offer?

7 Q. When I say offer a product for sale,
8 I mean have it available for someone to
9 purchase.

10 A. Uh-huh.

11 Q. Can you give --

12 A. Yes.

13 Q. So Ninja Entertainment often has
14 Apple products available for sale?

15 A. We do.

16 Q. Does Ninja Entertainment buy and
17 sell only used products?

18 A. Pretty much only used products.
19 Maybe five percent of the product line is new.

20 Q. What would qualify a product as new
21 for Ninja Entertainment's purposes?

22 A. In the recommerce industry there is
23 a coined term first life and second life.
24 First life is when an electronic has never been
25 used before, and second life is after it has

1 gone from one user to the second user. We
2 consider first life a new product.

3 Q. Is a new product a product that
4 Ninja Entertainment would purchase directly
5 from the manufacturer?

6 A. No. We don't buy anything brand new
7 from Apple. We do have manufacturers we
8 purchase from, but Apple is not one of them.

9 Q. Has Ninja Entertainment ever offered
10 any Apple products for sale as new?

11 A. Well, if we have had a brand new
12 merchandise, let's say for example someone
13 sells us a brand new phone, we have resold that
14 phone brand new on Amazon before.

15 Q. What would qualify it as being brand
16 new in that context?

17 A. Brand new would be never opened.
18 The box is still sealed.

19 Q. Does Ninja Entertainment take any
20 steps to verify whether the products it sells
21 are genuine?

22 A. Authentic.

23 Q. What do you mean by authentic?

24 A. Like OEM. Like original from the
25 manufacturer. They are not bootlegging like

1 MS. ROACH: The
2 attorney/client privilege attaches to
3 conversations in which legal advice is given or
4 sought, but the facts underlying those
5 conversations and the actions taken are not
6 covered by the attorney/client privilege.

7 There is no point in dwelling on it
8 here because it is not an issue. I was just
9 trying to understand better the business and
10 how it works, but this is not an issue of
11 particular concern in this deposition.

12 MR. KELMAN: Okay.
13 Understood.

14 BY MS. ROACH:

15 Q. Is Ninja Entertainment an authorized
16 reseller for any products?

17 A. Yes. Skull Candy headphones.

18 Q. Are there any other products for
19 which Ninja Entertainment is an authorized
20 reseller?

21 A. Boost Mobile.

22 Q. Are there any others?

23 A. That's it.

24 Q. Is Ninja Entertainment an authorized
25 reseller for Apple products?

1 A. We are not.

2 Q. I think you mentioned earlier that
3 Ninja Entertainment performs repairs on
4 products at times?

5 A. We no longer do.

6 Q. When did Ninja Entertainment perform
7 repair services?

8 A. 2010 to about six months ago.

9 Q. Why did Ninja Entertainment stop
10 performing repair services?

11 A. We decided to partner with another
12 company that would do the repairs for us.

13 Q. During the time that Ninja
14 Entertainment was providing repair services,
15 were those services certified by any
16 manufacturer?

17 A. I don't understand the question.

18 Q. Were the repair services that were
19 offered by Ninja Entertainment certified by any
20 manufacturer under that manufacturer's
21 certification program?

22 A. No.

23 Q. And that includes Apple? Ninja
24 Entertainment did not have repair services that
25 were certified by Apple?

1 A. We did not.

2 Q. You mentioned earlier that Ninja
3 Entertainment has multiple stores?

4 A. No. It only has one store now.

5 Q. Ninja Entertainment only has one
6 store?

7 A. Uh-huh.

8 Q. And by store I mean brick and mortar
9 retail location.

10 A. Yes.

11 Q. It previously had more than one
12 store; is that correct?

13 A. Uh-huh.

14 Q. Where is that one store located?

15 A. 404 Smithfield, right down the
16 street from here.

17 Q. In Pittsburgh, Pennsylvania?

18 A. Uh-huh.

19 Q. When were the other stores or
20 locations closed?

21 A. They were sold within the last six
22 months. I don't have exact dates.

23 Q. Who were the other stores that used
24 to be operated by Ninja Entertainment sold to?

25 A. Different parties. I don't know

1 respect to the Ninja Entertainment email
2 address?

3 A. None.

4 Q. Who receives a response to those
5 emails?

6 A. Probably nobody. They probably go
7 unanswered.

8 Q. Has Ninja Entertainment advertised
9 or promoted its business through any other
10 websites?

11 A. Facebook.

12 (Barr Exhibit No. 3 was marked
13 for identification.)

14 Q. Mr. Barr, I'm showing you what has
15 been marked as Exhibit No. 3. Do you recognize
16 the web page that is depicted in Exhibit 3?

17 A. Yeah.

18 Q. What is the web page?

19 A. It is a Ninja Entertainment website.

20 Q. Is this a fair and accurate
21 depiction of the home page of Ninja
22 Entertainment's website?

23 A. I don't recognize the icon sliced
24 across but yes. It also has the wrong logo.

25 Q. When you say it has the wrong logo,

1 what do you mean by that?

2 A. We changed the logo. Whoever
3 changed the website didn't change the logo.

4 Q. Where is the new logo used?

5 A. T-shirts are the wrong logo too. I
6 guess we haven't used the new logo yet.

7 Q. Who designed the new logo?

8 A. A Pittsburgh graphic designer. His
9 name is Daniel. I don't know his last name.

10 Q. Are the products shown on the web
11 page shown on Exhibit 3 products that are
12 currently offered for sale by Ninja
13 Entertainment?

14 A. Uh-huh.

15 Q. Where did the product images shown
16 on the web page shown in Exhibit 3 come from?

17 A. I have no idea.

18 Q. Do you know if those images were
19 licensed?

20 A. I don't.

21 Q. Do you know if someone at Ninja
22 Entertainment took those photos?

23 A. They might have. We have a camera
24 set up where we can put the item in and take
25 the picture with a white background.

1 Q. How does Ninja Entertainment obtain
2 the products that it offers for sale on its
3 Ninja Entertainment website?

4 A. From people trading in the
5 merchandise at the store.

6 Q. So the same way it obtains the
7 products it sells in its retail store?

8 A. Yeah, but I think the website is
9 just to give people a general idea of what we
10 have. I don't think anyone would ever purchase
11 an item from the website.

12 MS. ROACH: If you would
13 please mark as Exhibit 4 this one-page exhibit.

14 (Barr Exhibit No. 4 was marked
15 for identification.)

16 Q. Mr. Barr, are you typing on your
17 phone?

18 A. Yes. I'm writing a note.

19 Q. Okay. A note for yourself?

20 A. Yeah.

21 Q. I'm showing you what has been marked
22 as Exhibit 4. Do you recognize this web page?

23 A. Uh-huh.

24 Q. What is this web page?

25 A. It looks like a bio.

1 Q. On the Ninja Entertainment website
2 this is the about page; is that correct?

3 A. Yeah.

4 Q. Is this a fair and accurate
5 depiction of that web page as it appears?

6 A. Yes.

7 Q. Is the information in this About Us
8 section of the Ninja Entertainment website
9 shown on Exhibit 4 still accurate?

10 A. No.

11 Q. Is there any information that needs
12 to be updated or corrected?

13 A. Yeah. I now own 100 percent.
14 Daniel Kelman probably shouldn't be on the web
15 page.

16 Q. Do you know who wrote the
17 information that is listed on the About Us
18 section of this website?

19 A. I don't recall.

20 Q. Who creates the content for the
21 Ninja Entertainment website?

22 A. I believe this kid Alex.

23 Q. Is he an employee of Ninja
24 Entertainment?

25 A. No. He is an independent

1 contractor.

2 (Recess taken.)

3 BY MS. ROACH:

4 Q. Mr. Barr, who came up with the idea
5 that eventually became the crapple.com website?

6 A. I can't recall who the original
7 founder of the idea was. It was me, Dan and
8 his brother.

9 Q. When you say Dan, that is Daniel
10 Kelman?

11 A. Yeah.

12 Q. And his brother?

13 A. Zach Kelman.

14 Q. Zach Kelman?

15 A. Yeah.

16 Q. Can you walk me through how the idea
17 came about.

18 A. Yeah. So Zach had a phone that kept
19 texting L. No matter what you put on there, it
20 would text L at the end of it. Let's say you
21 would say like hi. It would say hi with an L
22 on it. If you were to go get a drink it would
23 say drinkl. The end of everything had an L on
24 it.

25 I was like kind of just starting to

1 buy a phone, and I realized there were two
2 types of phones. There were working phones and
3 broken phones. When you would sell a working
4 phone, half the time it would come back broken,
5 so like we kind of had an idea of making like a
6 used -- like first I think it was going to be
7 called 95% Functional, and we realized that was
8 just stupid. We were trying to figure out
9 different product lines, and we decided like
10 Crap was definitely the catchiest thing to use.

11 Q. When did the idea for the Crapple
12 website come about?

13 A. I think we were really interested in
14 what Gazelle was doing. Gazelle got a lot of
15 funding, and we realized we were doing the same
16 thing. We could do a site very similar to
17 Gazelle, but we were going to specialize in
18 just buying broken phones.

19 Q. When was it that the idea came
20 about?

21 A. Oh. When?

22 Q. For the crapple.com website?

23 A. Anywhere from like January,
24 February, December. Maybe of like March 2011
25 to January 2012. I'm not sure of the dates.

1 Q. So you had conversations with Zach
2 Kelman and Daniel Kelman --

3 A. There wasn't a name yet. I didn't
4 mean to interrupt. I'm sorry.

5 Q. You had conversations with Zach
6 Kelman and Daniel Kelman, and out of those
7 conversations came the idea for the crapple.com
8 website; is that correct?

9 A. An idea of a website that
10 specializes in just buying broken cell phones,
11 yeah.

12 Q. Were those conversations in person?

13 A. Yeah. Most were in person.

14 Q. So this was a time where both Daniel
15 Kelman and Zachary Kelman were in Pittsburgh?

16 A. I just remember like the first time
17 we talked about it. Zach, his brother, bought
18 a T-Mobile off me. I sent him the T-Mobile.
19 That bricked on him, so I sent him another
20 phone which was a brand new T-Mobile, and that
21 was the phone that had that L issue, and then
22 we had like an idea of like having a website
23 that specialized in taking in broken phones
24 because so many are dysfunctional.

25 Q. Do you remember when that occurred?

1 A. I probably could find you a tracking
2 number for when I sent Zach the first phone,
3 but it was like the next time we met we were
4 like laughing about it.

5 Q. Can you remember generally what year
6 that was?

7 A. I think it was 2011.

8 Q. Was 2011 approximately when Zach
9 Kelman had the phone that you said put the L at
10 the end of texts?

11 A. Every word, yeah.

12 Q. When you and Zach Kelman and Daniel
13 Kelman came up with the idea for the website
14 that would purchase used phones that eventually
15 became the crapple.com website, was there a
16 written business plan for that website?

17 A. No.

18 Q. Were there any emails about that
19 website that were exchanged?

20 A. No. Zach Kelman was rarely
21 involved. It was like me and Dan talking about
22 it. It was always just like a brainstorming,
23 and then we decided to actually try to make a
24 website.

25 Q. So has Zach Kelman had any

1 involvement with the website that became the
2 crapple.com website?

3 A. The way we got the L at the end of
4 Crap was from Zach.

5 Q. Has he had any other involvement?

6 A. No. Well, it is not like running
7 the business. It is like an idea we still
8 have.

9 Q. It was a website that was live for
10 some time; is that correct?

11 A. Yeah, but I don't think, like
12 similar to Ninja Entertainment, I don't think
13 we had any activity.

14 Q. But there were decisions made to
15 create a website, to have it go live, and I'm
16 asking whether Zach Kelman was involved at all
17 in that?

18 A. Me and Zach didn't have a
19 relationship with regards to that.

20 Q. When the idea for the website that
21 eventually became the crapple.com website was
22 initially conceived, what was the Crapple
23 website intended to do?

24 A. You could go onto the website, list
25 what type of phone you had and we would be able

1 to tell you what kind of cash value we could
2 send to you.

3 Q. In your initial planning of the
4 website that became the crapple.com website,
5 were any particular products that you discussed
6 that you would purchase through the website?

7 A. Yeah. I think we were going to be
8 specifically cell phones.

9 Q. Were there any particular brands of
10 cell phones you discussed specializing in?

11 A. I mean, there are only so many
12 carriers. There is Nokia, Samsung, Motorola,
13 Apple, Hawaii. I don't think we were going to
14 take Hawaiis though.

15 Q. When you were initially discussing
16 creating the crapple.com website, you were
17 considering offering all types?

18 A. Yeah. I mean, everyone has -- it's
19 not like one carrier doesn't make defective
20 phones. They all make defective phones.

21 Q. Were there any particular products
22 that you decided you would not offer to
23 purchase through the crapple.com website?

24 A. No. We weren't that far along with
25 the project.

1 Q. Did you discuss including Apple
2 products in that website that would eventually
3 become the crapple.com website?

4 A. Yeah. Of course. There are broken
5 Apple products out there.

6 Q. Was the Crapple website ever
7 described as a website that would deal only in
8 Apple products?

9 A. I don't think so.

10 Q. Did you ever describe the Crapple
11 website as a website that would deal only in
12 Apple products?

13 A. No.

14 Q. And you never told anyone that the
15 Crapple website would deal only in Apple
16 products?

17 A. I'm sure I told people it would deal
18 in Apple products but not just exclusive to
19 Apple. There are multiple carriers out there.
20 Apple has some big competition with Samsung.

21 Q. Were there ever any plans to offer
22 advertising on the crapple.com website?

23 A. I'm not sure. It is probably a
24 better question to ask to Dan than to me.

25 Q. Was Daniel Kelman more involved on

1 the business side of the website that became
2 the crapple.com website?

3 A. Yes. At no point do I think -- I
4 don't think we talked to any advertisers about
5 being able to advertise on the site.

6 Q. Did Ninja Entertainment intend to
7 sell the smart phones that it purchased through
8 the website, the crapple.com website?

9 A. No. Because we were going to be
10 buying wholesale, there are places like Genco
11 and other large places who will buy your
12 product in bulk. You just have to get enough
13 of it.

14 Q. So Ninja Entertainment did not
15 intend to sell at retail smart phones that it
16 bought through the crapple.com website?

17 A. I don't think our business was
18 concrete. For example, if you asked me about
19 something that I put together, I would be able
20 to tell you every detail. This was still a
21 very in theory process.

22 Q. The products that Ninja
23 Entertainment purchased through the crapple.com
24 website, did it intend to sell them under the
25 Crapple mark?

1 A. I think the idea was a broken phone
2 was going to be considered a Crapple.

3 Q. When you sold it after you purchased
4 it on the crapple.com website, was Ninja
5 Entertainment going to sell it to the next
6 party under the Crapple mark?

7 A. Well, different things could happen
8 with items. Certain items could be
9 refurbished. Certain items were going to need
10 to be scrapped, and certain items were going to
11 be able to be resold. There were a lot of
12 different directions where the product could
13 go. Branding, like we weren't trying to push a
14 brand of how we were going to sell it but
15 how the items would come in. No one wants a
16 broken telephone. Do you want to buy a broken
17 cell phone?

18 Q. Who owns the domain name
19 crapple.com?

20 A. I think Dan does.

21 Q. Daniel Kelman owns the domain name
22 crapple.com?

23 A. Yes.

24 Q. In his individual capacity?

25 A. Either him or the company. I don't

1 remember how that was set up.

2 MR. KELMAN: As the attorney,
3 would you like me to come on record and clarify
4 the legal status?

5 MS. ROACH: No. I'm just
6 trying to get a picture of Mr. Barr's testimony
7 today. Thank you though.

8 BY MS. ROACH:

9 Q. Is Crapple incorporated? Is there a
10 Crapple entity?

11 A. No.

12 Q. Is there a Crapple, LLC?

13 A. No.

14 Q. Has there ever been a Crapple, LLC?

15 A. Not that I know of.

16 Q. Was Crapple intended to be a d/b/a
17 of Ninja Entertainment for purposes of this
18 website?

19 A. I think it was supposed to be a
20 separate entity. It was going to be like its
21 own incubator, but we never had the time to
22 really pursue the business.

23 Q. When did Daniel Kelman acquire the
24 domain name crapple.com?

25 A. I'm not sure.

1 Q. Can you give me an estimate?

2 A. I'm not sure. I don't remember. I
3 can't reference a time frame.

4 Q. Do you know what year?

5 A. 2011.

6 Q. How did Daniel Kelman acquire the
7 domain name crapple.com?

8 A. Typically you buy a domain off
9 somebody, so I think he went on one of those
10 websites and purchased a domain name and then
11 had to find the owner of the domain and then
12 made them an offer.

13 Q. Do you know who the previous owner
14 of the crapple.com was before Daniel Kelman?

15 A. I don't know him, but we spoke to
16 him. I don't remember his name.

17 Q. What was the crapple.com domain
18 being used for before Daniel Kelman purchased
19 it?

20 A. Nothing.

21 Q. It wasn't associated with an active
22 website?

23 A. No.

24 Q. Who contacted the domain owner to
25 purchase the crapple.com domain?

1 owner, do you know how that took place?

2 A. I don't.

3 Q. Who owns the content of the Crapple
4 website?

5 A. What is on the website?

6 Q. Yes.

7 A. I do.

8 Q. Who created the content for the
9 Crapple website?

10 A. Some guy in India or Pakistan. Some
11 cricket player. He says he's a professional.
12 I don't know about that.

13 Q. Do you know his name?

14 A. Matador. Something like that.

15 Q. Do you have his address?

16 A. No.

17 Q. Do you have any contact information
18 for him?

19 A. I don't.

20 Q. What is the website designer -- I'm
21 going to call him the website designer instead
22 of Matador -- what is the website designer's
23 relationship to Ninja Entertainment?

24 A. None. I think he was an independent
25 contractor hired from oDesk.

1 Q. What is oDesk?

2 A. ODesk is a website where you can
3 find independent contractors who can do like
4 graphic design or web development for you.

5 Q. So odesk.com, is it a website?

6 A. Yes.

7 Q. So the website designer is not an
8 employee of Ninja Entertainment?

9 A. No.

10 Q. How did the website designer come to
11 do the work for Ninja Entertainment?

12 A. I think Daniel found him on oDesk.

13 Q. How does someone hire someone
14 through oDesk; do you know?

15 A. I have never used oDesk. I assume
16 it is like Craigslist so you put up an ad and
17 people respond and send in their resumes with
18 samples of their work.

19 Q. Have you seen the job posting that
20 was used on oDesk?

21 A. No. I have never been on the oDesk
22 site.

23 Q. Did you communicate with Daniel
24 about the job posting on oDesk?

25 A. No.

1 Q. Is that job posting still available
2 online?

3 A. I don't think so.

4 Q. Did you check in connection with
5 responding to Apple's discovery requests?

6 A. Say that again please.

7 Q. Did you check to see if the job
8 posting on oDesk was still available when you
9 were responding to Apple's discovery requests?

10 A. I wasn't handling anything on oDesk
11 so I'm unsure.

12 Q. You mentioned that resumes or
13 portfolio information could be exchanged. Have
14 you seen any of that information?

15 A. I haven't.

16 Q. Do you know who would have that
17 information?

18 A. I don't.

19 Q. Would Daniel Kelman have that
20 information?

21 A. He might.

22 Q. What did the website designer that
23 was hired through oDesk create for the website
24 specifically?

25 A. I only knew what the website looked

1 like. I don't know what he did and what Dan
2 did, but it looks like the Gazelle or the Ninja
3 site, different icons and what we could pay for
4 each icon.

5 Q. When you say what he did, what the
6 web designer did and what Dan did, did Daniel
7 Kelman contribute to the design of the
8 crapple.com website?

9 A. It is going to be a very gray area.
10 There is no white and black here. I wasn't
11 involved in the web development so I don't know
12 who did what. We didn't have like a tangible
13 business plan where these were Matador's
14 responsibilities and these were Dan's
15 responsibilities. For all I know, one of them
16 did all the work or neither of them did
17 anything. I don't know.

18 Q. For the purposes of this deposition,
19 when you say Matador, is the name of the
20 website designer that you are referring to
21 Masudur Rahman? Does that sound correct?

22 A. Might be. I thought it was Matador.

23 Q. Okay. We will call him Matador.

24 A. We will call him the web developer.

25 Q. The web developer. The web

1 developer was hired to create content for the
2 crapple.com website; is that correct?

3 A. I'm not sure if he was hired to
4 create content, build code. I knew there was a
5 lot to be involved, but like I said, we didn't
6 have a concrete plan moving forward so I don't
7 know what responsibilities were assigned to
8 him.

9 Q. He was hired to create something for
10 the crapple.com website?

11 A. Yes.

12 Q. Did he create that?

13 A. I don't know. ODesk is like
14 Craigslist. I'm not sure how much talent you
15 can find there. I'm not even sure if he
16 finished the project.

17 Q. Did Ninja Entertainment pay the web
18 designer that was hired on oDesk in connection
19 with the crapple.com website?

20 A. We paid him, but I don't know if he
21 was paid for that job.

22 Q. What job might he have been paid
23 for?

24 A. Maybe for the Red Booth. I remember
25 he was paid for something. He might have built

1 the Ninja website for all I know.

2 Q. You said that you owned the content
3 from the crapple.com website?

4 A. I guess so.

5 Q. I asked you earlier who owned the
6 content of the crapple.com website?

7 A. Who else would own it?

8 Q. I'm asking you who owns the content
9 from the crapple.com website?

10 A. I hope I do.

11 Q. Did you ever enter into an agreement
12 with the designer who created the content for
13 the website?

14 A. No.

15 Q. Did you ever enter an assignment of
16 the rights and the content on the crapple.com
17 website?

18 A. It sounds like most of this is a
19 conversation that needs to happen with Dan and
20 yourself because I'm very out of the loop of
21 any interaction that happened with the
22 development of the Crapple website. I will try
23 to answer anything you ask, but most of the
24 questions I'm just going to not know.

25 Q. Is the crapple.com website a

1 business operated solely by Daniel Kelman?

2 A. The operations would be solely
3 Daniel Kelman.

4 Q. And he is the owner of the domain
5 named crapple.com; is that correct?

6 A. Not 100 percent sure.

7 Q. He may be the owner of the
8 crapple.com?

9 A. He may be the owner.

10 Q. If Daniel Kelman is the owner of the
11 crapple.com domain name and he is 100 percent
12 responsible for the activities of the website,
13 what is Ninja Entertainment's involvement with
14 the crapple.com website?

15 A. I believe that we paid for the
16 domain name so there was a partnership formed.

17 Q. When you say we, Ninja Entertainment
18 paid for the domain name of crapple.com?

19 A. Yes.

20 Q. Which is owned in the name of Daniel
21 Kelman?

22 A. Yes. We are assuming. We are not
23 sure. You might know though.

24 Q. I'm sorry?

25 A. I don't know if the name is under

1 and employee records.

2 Q. Do you think the drafts were in
3 paper form?

4 A. I don't think so. Dan left in
5 May 2012, and I don't remember seeing anything
6 when we cleaned out his office.

7 Q. So if the drafts of the crapple.com
8 website that you saw weren't in paper form,
9 were they in electronic form?

10 A. I remember seeing paper form, which
11 was like an outline, but I also remember seeing
12 it on the computer.

13 Q. And you said you don't know where
14 the paper documents are; is that correct?

15 A. I don't.

16 Q. Do you know who would know where the
17 paper documents are?

18 A. I would assume you would have to go
19 to the city dump.

20 Q. Okay. As far as the electronic
21 documents showing the drafts of the crapple.com
22 website?

23 A. I don't think I ever saw drafts. I
24 think I just saw the site live.

25 Q. You just saw the site live?

1 A. Yeah.

2 Q. But when you were talking about the
3 paper documents that you saw, were those drafts
4 of the crapple.com website?

5 A. They might have been drafts or a
6 printout after the site had already gone live.

7 Q. Do you know if the website designer
8 kept a copy of the content from the crapple.com
9 website from his portfolio?

10 A. If I never spoke to the website
11 designer, how would I know that?

12 Q. You could have spoken with someone
13 else who told you.

14 A. No hearsay. I didn't talk to
15 anybody about it.

16 Q. Do you know if the website designer
17 that was hired through oDesk created the
18 written copy that was included on the
19 crapple.com website?

20 A. What do you mean by written copy?

21 Q. The text that was included as
22 opposed to images or the overall design of the
23 web page.

24 A. I don't think the website had
25 content. I don't think it had bio notes or

1 anything on there yet or contact information.
2 It just had like a front page display of
3 merchandise.

4 Q. To your knowledge, did anyone else
5 contribute anything to the design and the
6 content of the crapple.com website besides the
7 individual hired through odesk.com?

8 A. No.

9 Q. Did Daniel Kelman contribute
10 anything to the sign and the content of the
11 crapple.com website?

12 A. Yeah, I guess he could have helped.
13 I think both of them worked together.

14 Q. When did the crapple.com website go
15 live?

16 A. Not sure.

17 Q. Can you give me an estimate?

18 A. Between May 2011 and May 2012. I'm
19 not sure.

20 Q. Do you know whether it was before or
21 after the trademark application was filed by
22 Ninja Entertainment Holdings, LLC to register
23 the mark Crapple?

24 A. I think it was after. The website
25 was live prior to the trademark being filed.

1 A. I don't think so.

2 Q. Were any products ever listed on the
3 crapple.com website?

4 A. Products listed?

5 Q. Were any products ever listed on the
6 crapple.com website as products that Ninja
7 Entertainment would purchase at a particular
8 price?

9 A. Yes.

10 Q. What products were listed on the
11 website?

12 A. Different phones. I don't recall
13 what they were.

14 Q. Were any Apple products listed on
15 the crapple.com website --

16 A. Yes.

17 Q. -- as products Ninja Entertainment
18 would purchase?

19 A. Yes.

20 Q. Did the crapple.com website have any
21 customers?

22 A. No.

23 Q. Did anyone ever contact crapple.com
24 about selling an item even if the sale never
25 occurred?

1 A. I don't think so.

2 Q. Who would know?

3 A. I guess Dan. I think there might
4 have been one person, but it definitely wasn't
5 more than one client.

6 Q. Is the crapple.com website currently
7 publicly available?

8 A. No.

9 Q. When did the crapple.com website
10 cease to be publicly available?

11 A. I don't know.

12 Q. Do you know generally?

13 A. No.

14 Q. Do you know in what year?

15 A. I think 2012.

16 Q. Do you know if it was before or
17 after the institution of these proceedings?

18 A. I'm not sure. I better start
19 keeping a better calendar.

20 Q. Do you know if it was before or
21 after the Ninja Entertainment website launched?

22 A. When it went down or when it went
23 up.

24 Q. When the crapple.com website came
25 down.

1 Q. We will mark this six-page document
2 as Exhibit 5.

3 (Barr Exhibit No. 5 was marked
4 for identification.)

5 Q. Mr. Barr, I'm showing you what has
6 been marked as Exhibit 5.

7 A. This is the new site?

8 Q. Do you recognize the web page that
9 is depicted on the screen shot and the
10 printouts that make up Exhibit 5?

11 A. Yeah. It looks like gazelle.com.

12 Q. Excuse me?

13 A. It looks like Gazelle.com.

14 Q. Can you see the domain name that
15 appears in the address bar on the top of the
16 printout on Exhibit 5?

17 A. Crapple.com.

18 Q. Is this a true and correct depiction
19 of content that appeared on the crapple.com
20 website when it was publicly available in 2012?

21 A. I thought it was yellow. This looks
22 more orange, but, yeah, this looks like it.
23 This is pretty cool.

24 Q. Have you never seen this before?

25 A. Never paid much attention to it.

1 Q. What is the image shown in the top
2 left of the web page that is shown on
3 Exhibit 5?

4 A. It looks like Crapple, and then it
5 has the logo you showed me earlier inside an
6 orange.

7 Q. When you say the logo I showed you
8 earlier, what are you referring to?

9 A. The, what do you call it, the
10 trollface from Exhibit 1.

11 Q. The trollface that I showed you on
12 Exhibit 2. The image is an orange with the
13 trollface image that was shown on Exhibit 2; is
14 that correct?

15 A. It looks a little different, but it
16 is pretty much the same thing.

17 Q. What is above the orange depicted on
18 the top of the web page shown on Exhibit 5?

19 A. Are you referring to the antennas?

20 Q. Yes.

21 A. It looks like old school antennas,
22 like TV antennas.

23 Q. Have you seen this image before of
24 the orange with the drawing of the trollface
25 image on the inside and the antennas on top

1 before?

2 A. Yeah. I forgot about it. It's
3 awesome.

4 Q. Where did you see it before?

5 A. I guess I saw it here.

6 Q. When you say here, did you see it on
7 the crapple.com website before?

8 A. Yeah, on the website.

9 Q. When the website was live?

10 A. Yeah.

11 Q. Who created the image of the orange
12 with the trollface inside of it and the
13 antennas that are shown on the top of the web
14 page on Exhibit 5?

15 A. I'm not sure.

16 Q. Do you know whose idea it was to
17 create that image?

18 A. Maybe Michelangelo. I don't know.

19 Q. Do you know what created that image
20 for Ninja Entertainment to appear on the
21 crapple.com website?

22 A. Leonardo da Vinci's great, great
23 granddaughter? I don't know.

24 Q. Created that image to appear on the
25 crapple.com website?

1 A. I didn't help at all with the
2 content. It could have been her. I don't
3 know.

4 Q. It would seem highly unlikely; is
5 that correct?

6 A. We don't know who Leonardo da
7 Vinci's great, great granddaughter was so it is
8 possible.

9 Q. So you do not know who created the
10 image that is shown on the top left of the web
11 page on Exhibit 5?

12 A. I don't.

13 Q. Did you have any discussions with
14 Daniel Kelman or the website designer about the
15 imagery that would appear on the crapple.com
16 website?

17 A. I talked to Dan about it. I lost
18 interest a little bit because it is not the
19 logo I wanted.

20 Q. What was the logo that you wanted?

21 A. I wanted a piece of technology with
22 like a sledgehammer through it.

23 Q. So you discussed that image as well
24 as this image with Daniel Kelman?

25 A. I didn't discuss this image with

1 him, but I did discuss the television with the
2 sledgehammer through it. There is a video on
3 Wal-Mart where a kid goes in there with a
4 baseball bat and smashes every television
5 inside, and when the cops asked him why he said
6 somebody had to do it first, and it seemed kind
7 of funny.

8 Q. Do you know why an orange was
9 selected for the image to be associated with
10 the Crapple name on the crapple.com website?

11 A. Yeah. I was really into oranges
12 because I was in Florida, and then I was in
13 Israel. I liked the color a lot. Orange is
14 like -- it is not soothing. I forget what it
15 does to you, but when I was in Florida I was
16 really into orange. I had a couple companies
17 that I wanted to launch called Orange.

18 Q. What were those companies?

19 A. One was going to be called Orange
20 and one was going to be called Juice. We never
21 pursued them.

22 Q. What was the nature of those
23 companies?

24 A. Orange was going to be a business
25 where when tourists were on the beach, so like

1 two men sitting next each other, I would send a
2 girl that looked like a beach patrol with
3 suntan lotion, and for a fee she would spray
4 them and for a bigger fee she would rub on the
5 suntan lotion.

6 Q. So it was a service for applying
7 sunscreen to people on the beach?

8 A. Uh-huh.

9 Q. And what about the Juice business?

10 A. Juice was going to be available
11 lockers to lock your telephone and charge your
12 cell phone when you were at the beach.

13 Q. What is the association with the
14 orange with the smart phones that Crapple would
15 be buying through the crapple.com website?

16 A. Can you repeat the question.

17 Q. What is the relationship between an
18 orange and the smart phones that Crapple would
19 be purchasing through the crapple.com website?

20 A. There isn't. Like a logo typically
21 doesn't have to be -- like there are some
22 companies that didn't have to reference the
23 company to be relative to it. How is an Apple
24 related to an iPhone 5? They have no relation
25 to each other other than it is a brand that the

1 consumer recognizes.

2 Q. Was there a message that the orange
3 was trying to communicate to the consumer?

4 A. It looks memorable, I will tell you
5 that.

6 Q. What about the trollface on the
7 inside of the orange? Is there a message that
8 that is intended to communicate to people as
9 part of the advertising of crapple.com?

10 A. I guess if memory serves me right,
11 like I told you earlier, I couldn't really
12 recall it, but I did recall Occupy Wall Street
13 and the face so I guess it is memorable.

14 Q. I guess I'm trying to understand if
15 you know why this image was chosen to be an
16 emblem of crapple.com. What does it
17 communicate to the consumer, the customer you
18 are trying to attract?

19 A. The owners are crazy. I don't know.
20 It doesn't look like it makes any sense.
21 Orange is soothing. I like that it is an
22 orange. I don't know what the troll represents
23 really, so I don't know how the consumer is
24 going to react to that.

25 I guess the troll is based off

1 serving the 99 percent represents the masses,
2 so it is a company that you remember it is
3 orange and we cater to everybody.

4 Q. Is that interpretation of the image
5 anything that you discussed with Daniel Kelman?

6 A. No. I wanted the image to be a
7 television with a sledgehammer through it.

8 Q. Were there any other images or logos
9 that were considered for the crapple.com
10 website besides the television with the
11 sledgehammer and this orange with the trollface
12 and the antenna that appears on the top left of
13 Exhibit 5?

14 A. Yeah. I think there were a couple
15 options to pick from.

16 Q. Do you remember what they were?

17 A. I think they were all similar to
18 this.

19 Q. What do you mean by similar to this?

20 A. I think like one was an orange
21 without the trollface. One was an orange
22 without the antennas. One was the orange with
23 the trollface and the antennas.

24 Q. Were there any variations that
25 included elements that aren't shown here in

1 Exhibit 5?

2 A. I think most of them were just the
3 forms with the antennas. I guess this was the
4 finalized product. This isn't what I remember.

5 Q. Do you know why a fruit was chosen
6 as an emblem for the crapple.com website?

7 A. Yeah. I was very interested in
8 oranges from being in Florida, and no one uses
9 an orange for a logo. I mean, Tropicana kind
10 of does, but it is very memorable.

11 Q. What memory does it create?

12 A. Citrus, like you can actually smell
13 it, taste it. It invokes all the senses. You
14 can kind of hear an orange when you squeeze it.
15 It is great for marketing.

16 Q. Are you familiar with the expression
17 apples and oranges?

18 A. Yeah, I have heard that before.

19 Q. What does it mean to you?

20 A. It is comparing apples to oranges.
21 They are not the same.

22 Q. Did the expression apples and
23 oranges factor in at all to your decision to
24 use an orange on the crapple.com website?

25 A. No, but after we used the orange

1 people started referencing it.

2 Q. Started referencing the expression
3 apples and oranges?

4 A. Yes.

5 Q. What people are you referring to?

6 A. I can't remember, but when you are
7 opening a business typically you discuss your
8 business with people, and I remember when we
9 were explaining to them that we might use an
10 orange for a logo people made the expression,
11 oh, like apples to oranges. I think when
12 people say orange it must be a common thing
13 that people think of. It is like something you
14 learn as a kid. What do you think when you
15 hear orange?

16 Q. Are you asking me?

17 A. Yeah.

18 Q. I'm sorry. I'm asking the questions
19 here today, but understood. Thank you.

20 A. You're welcome.

21 Q. When people said that the orange on
22 the crapple.com website reminded them of the
23 expression apples to oranges and you said that
24 apples and oranges means a comparison of two
25 different things, what did they think the

1 comparison involved here?

2 A. Let's backtrack the question. It
3 wasn't me showing somebody a picture. It was
4 just a communication me telling them we might
5 go with an orange as a logo. Do you want to
6 repeat your question?

7 Q. Sure. You said that you had
8 conversations with people about using an orange
9 for the logo, and you said that some people
10 commented to you that it reminded them of the
11 expression apples and oranges, and you said
12 that the meaning of the expression apples and
13 oranges is a comparison of two things, and I
14 was wondering, the people that brought to mind
15 the expression apples to oranges, what they
16 thought the comparison was in the crapple.com
17 website.

18 A. I'm not sure. They just made the
19 reference like apples to oranges.

20 Q. Can you identify any of the people
21 that made the comment?

22 A. Not in particular.

23 Q. Can you generally?

24 A. I'm trying to think of who would
25 have made that reference.

1 Q. Perhaps a category of people?

2 A. Maybe a bartender that we told the
3 idea to.

4 Q. Somebody not associated with Ninja
5 Entertainment?

6 A. Yeah. Maybe a waitress.

7 Q. Did any customers of Ninja
8 Entertainment make that comment to you?

9 A. I don't think any customers were
10 aware of this business model we were going
11 with. It was just me and Dan. I don't think
12 anyone at Ninja Entertainment is aware of this
13 whatsoever except for me and Dan.

14 Q. Do you see at the top right of the
15 web page shown on Exhibit 5 there is a login
16 and a register button?

17 A. Uh-huh.

18 Q. Did anyone ever register with the
19 crapple.com website when it was publicly
20 available in 2012?

21 A. We are going to have to get on Skype
22 to try to get in contact with this guy's name
23 that we can't even pronounce.

24 Q. When the website was being operated,
25 when it was live in 2012 and people from the

1 the orange?

2 Q. The fruit. The orange image on the
3 crapple.com website, did anyone comment to you
4 that it made them think of Apple, Inc.?

5 A. No. That's specifically why we made
6 the orange so crazy looking. I think if we
7 would have made a specific orange we would have
8 got more references, so I'm really surprised
9 that Apple considers this orange even similar
10 to their apple. It is very different. It
11 makes me almost feel like Apple is a little bit
12 paranoid.

13 Q. As far as communications that you
14 had with people when they were talking about
15 this orange image, did anyone comment to you or
16 indicate that they associated it with Apple,
17 Inc.?

18 A. Not that I recall.

19 Q. We will mark this three-page exhibit
20 as Exhibit 6.

21 (Barr Exhibit No. 6 was marked
22 for identification.)

23 Q. I'm showing you what we have marked
24 as Exhibit 6. Do you recognize this web page
25 shown in Exhibit 6?

1 vintage Gordon Gekko phone is about this big
2 (indicating), and that is not what we were
3 looking to purchase.

4 MS. ROACH: For the court
5 reporter, when he said "this big" he gestured
6 about a foot-and-a-half distance between his
7 hands.

8 BY MS. ROACH:

9 Q. Where it says, "We gotta make sure
10 it's a Crapple," you said that the purpose of
11 that is to make sure that you were trying to
12 sell crapple.com a broken phone. Was the
13 purpose of crapple.com to purchase only
14 broken --

15 A. We would buy working phones also,
16 but the purpose was to buy broken phones. That
17 was going to be our niche.

18 Q. Were there any particular brands of
19 phones that the crapple.com website was
20 intending to purchase?

21 A. You have already asked that
22 question. I can answer it again if you like.

23 Q. Sure.

24 A. There are many carriers. There is
25 Samsung. There is Nokia. There is Sony.

1 There is Motorola. There is Apple. We were
2 going to purchase all carriers.

3 Q. I don't mean to correct you, but the
4 manufacturers are the ones who make the phones.

5 A. Yeah. Oh. Carrierwise you are
6 correct. We were going to take in Verizon,
7 Sprint AT&T, the four big networks.

8 Q. And you had the capability to repair
9 all manufacturers of phones, phones produced by
10 all manufacturers of phones?

11 A. Not at that time, but we could have
12 outsourced to somebody who could repair the
13 phones.

14 Q. Were there any particular
15 manufacturers of phones for which Crapple had
16 expertise in repairing?

17 A. I wouldn't say we were an expert in
18 repairing anything.

19 Q. Were there any types of phones that
20 Crapple had particular knowledge of repair for?

21 A. We knew how to repair anything that
22 had LCD damage that didn't have the screen
23 attached to the board.

24 Q. I'm sorry. I don't understand.

25 A. So on a telephone --

1 Q. Some Apple --

2 A. It depends on the damage.

3 Q. Generally speaking, does an Apple
4 smartphone require soldering to fix?

5 A. Define fix.

6 Q. Repair as the crapple.com website
7 was offering to do.

8 A. Well, so with these phones it
9 depends on the damage. Some phones will
10 require soldering. Some won't. Damage can be
11 anything from a broken LCD to a broken
12 headphone jack to a broken sound card. There
13 is a lot of damage. The telephone nowadays is
14 very similar to a computer. There is a lot of
15 things that can go wrong.

16 Q. But out of the products that Crapple
17 would purchase and fix on the crapple.com
18 website, those included Apple products?

19 A. Yeah. We can fix Apple products.

20 Q. We will mark this two-page document
21 as Exhibit 10.

22 (Barr Exhibit No. 10 was
23 marked for identification.)

24 Q. Mr. Barr, I'm showing you what has
25 been marked as Exhibit 10. Do you recognize

1 A. It is not.

2 Q. Do you see on Exhibit 10 that there
3 is an image of an Apple iPhone in the middle of
4 the web page shown in Exhibit 10?

5 A. Yes.

6 Q. Do you know why an image of an Apple
7 iPhone was included on the Forum web page of
8 the crapple.com website?

9 A. As you explained earlier, Apple is a
10 pretty famous brand, so when you pick what
11 phones you can purchase, Apple is going to be
12 one of those phones.

13 Q. There is only one image featured
14 here on the Forum web page of the crapple.com
15 website; isn't that correct?

16 A. If we would be doing the page today,
17 we would probably pick the Samsung Galaxy 4
18 because it is now the most particular phone.

19 Q. On the web page that I am showing
20 you, which is the crapple.com website, the
21 Forum page when it was live in June 2012, is
22 the only image shown, the only smartphone image
23 shown on this page the Apple iPhone?

24 A. Uh-huh.

25 Q. Do you know why the image of the

1 Apple iPhone was selected for this page?

2 A. If you are trying to show a phone,
3 you want to show what is going to be the most
4 logical reason for somebody to understand
5 phones, and at that time an iPhone was going to
6 be the best representation of the cell phone.

7 Q. Is that because the Apple iPhone at
8 that time was the most popular cell phone?

9 A. At the time it was the most highly
10 traded phone on the market. There were upwards
11 of like 50,000 trades per week happening.

12 Q. Do you know what the Forum web page
13 of the crapple.com website was intended to be
14 used for?

15 A. I don't.

16 Q. Do you know where the image of the
17 Apple iPhone on the Forum web page of the
18 crapple.com website came from?

19 A. I don't.

20 Q. Do you know whether the image was
21 licensed?

22 A. I don't.

23 Q. Do you know whether there was ever
24 any other content added to this Forum web page
25 of the crapple.com website when it was live?

1 A. I don't.

2 Q. Do you know who would know?

3 A. Possibly Dan.

4 Q. Possibly Daniel Kelman?

5 A. Yeah.

6 Q. Because you said Daniel Kelman was
7 solely responsible for the crapple.com website
8 when it was live?

9 A. Not solely responsible. I don't
10 think anyone was responsible when it was live.
11 I think he was the most active on participating
12 in the endeavor.

13 Q. Participating in the endeavor of
14 what?

15 A. Of building the domain.

16 Q. Building the crapple.com website?

17 A. Yeah.

18 Q. So Daniel Kelman was solely
19 responsible for building the crapple.com
20 website?

21 A. By responsible, you are saying like
22 who built the website? I'm unsure, but I know
23 he was definitely part of the participating and
24 helping.

25 Q. Okay, so Daniel Kelman was the one

1 Do you see in the middle of the
2 first page of that Exhibit 11 where it says,
3 "What do you call a smart phone you no longer
4 use?"

5 A. I do.

6 Q. "A piece of Crapple."

7 A. Uh-huh.

8 Q. And then do you see at the beginning
9 of the next paragraph on the first page of
10 Exhibit 11 it says, "Why did you buy that
11 crappy iphone anyway?"

12 A. I do.

13 Q. The iPhone is a smartphone offered
14 by Apple; is that correct?

15 A. The iPhone is a what?

16 Q. The iPhone is a smartphone offered
17 by Apple, Inc.; is that correct?

18 A. That's correct.

19 Q. So in this reference to, "Why did
20 you buy that crappy iphone anyway," is that
21 because Crapple is supposed to refer to a
22 crappy iPhone?

23 A. I think it is just catching the
24 customer's attention. It could be crappy
25 anything. They just decided to pick an iPhone.

1 They could have put why did you pick that
2 crappy Galaxy? Why did you pick that crappy
3 Nokia? It could have been anything.

4 Q. Why was the iPhone chosen to be
5 included here on this page of the website?

6 A. I'm unsure. More than likely
7 because we wanted people to trade in
8 telephones, and what was the biggest phone on
9 the market at that time?

10 Q. So one of the phones that you were
11 particularly interested in purchasing through
12 the crapple.com website were "crappy iPhones"?

13 A. We were interested in purchasing all
14 broken phones, but iPhones would be included in
15 what we would like to purchase.

16 Q. You mentioned earlier that the
17 iPhone at the time that the crapple.com website
18 was live was one of the most highly traded on
19 the market. Is that why iPhone would have been
20 used here on this web page of crapple.com?

21 A. It makes sense. I didn't write the
22 content, so I can't give you an exact answer.
23 If you are asking me to interpret this, I would
24 say we were trying to catch the consumers's
25 attention, and we are buying crap and broken

1 phones, and the most likely item we can get is
2 going to be an iPhone because it is the biggest
3 item on the market.

4 Q. Aside from this web page, in
5 designing the crapple.com business, not
6 necessarily the page depicted right here
7 because you can speak better to that, I believe
8 was it a particular goal to purchase iPhones
9 through the crapple.com website as opposed to
10 other phones?

11 A. Purchasing iPhones would be part of
12 the goal. The goal would be every consumer has
13 a drawer full of broken cell phones, and we
14 would like that drawer to be mailed in to us
15 and we give them cash for those items. Even
16 like that joke earlier, that Gordon Gekko
17 phone, all phones have a little bit of gold in
18 them. Those old Gordon Gekko phones are worth
19 about \$2 a piece.

20 Q. Okay, so iPhones were included in
21 the phones that Crapple was trying to purchase
22 through the crapple.com website; is that
23 correct?

24 A. That's correct.

25 Q. Has anyone ever asked whether

1 Crapple has anything to do with Apple products?

2 A. Yeah. I have had someone ask me
3 that before.

4 Q. Who asked you that before?

5 A. I don't recall.

6 Q. Do you remember when that happened?

7 A. I don't.

8 Q. Do you remember who else was there?

9 A. I don't.

10 Q. Do you remember specifically what
11 they said?

12 A. I think they know that I have a cell
13 phone business. Most people who know me know I
14 sell cell phones. I told them I was starting a
15 new company that bought broken phones and that
16 it was going to be called Crapple, and I told
17 them that it was going to be purchasing Apple
18 phones, and when they heard Crapple and Apple
19 they heard the words rhyme.

20 A lot of words rhyme. Like Wendy's
21 sells hamburger; okay? So if somebody would
22 open up a company called Sendy's that is like
23 pretty direct. That wasn't the case.

24 I explained to them that I don't
25 think Apple is going to be concerned because it

1 doesn't sound like Apple. When you hear Apple,
2 you don't think Crapple. When you hear the
3 word Crapple, you don't hear the word Apple,
4 and Apple is like the greatest company in the
5 world. No one is going to think of Apple
6 products as crap.

7 It's kind of funny. That's why I
8 think Apple is a little bit paranoid. When you
9 hear the word Crapple, you shouldn't hear Apple
10 in there unless you are paranoid. I think if
11 you take ten out of ten consumers and say, hey,
12 what do you think when you hear Crapple, they
13 are going to say I hear the word crap.

14 Q. But you had at least one person
15 comment to you that when they heard that you
16 were going to be purchasing used and broken
17 phones under the name Crapple that it made them
18 think of Apple; correct?

19 A. They told me that the word Crapple
20 and Apple rhyme with each other. That was
21 pretty much the context.

22 Q. Okay, so the conversation that you
23 had that we were just talking about consisted
24 of the person commenting that Crapple and Apple
25 rhyme?

1 Q. You talked earlier about how you
2 believed that the Crapple name came about.

3 A. I know exactly how the name came
4 about. I was there.

5 Q. All right. That is what I'm asking.
6 How was it determined that this would be the
7 mark that you would use for the website?

8 A. So we were definitely talking, like
9 joking, like shit, and shit was too strong of a
10 word. Then we found like crap was a better
11 word to use.

12 I just got back from Israel. I was
13 joking around and using L before every word.
14 Like "the" in Hebrew was L, so we were doing
15 kind of a joke, like "the" before everything.
16 We started joking around, like the crap.

17 Then we got back to joking about how
18 his brother's phone, Zach, was doing L at the
19 end of everything, so we were thinking of
20 La Crap but then it sounded a little bit too
21 French, and then we were thinking Crappel and
22 it was going to sound a little bit like Hebrew,
23 and then we decided a more American name would
24 be like Crapple.

25 Q. So you decided to spell it

1 C-R-A-P-P-L-E instead of when you said Crapel,
2 would that have been spelled C-R-A-P-E-L?

3 A. I don't remember ever discussing the
4 spelling of the word.

5 Q. Okay, so whose decision was it to
6 spell it the way it ultimately came to be
7 spelled on the crapple.com website?

8 A. I'm not sure.

9 Q. Did you ever discuss the spelling of
10 the word with anyone?

11 A. No. I'm actually not the best with
12 spelling. I was a little bit dyslexic when I
13 was a kid, so spelling is not my strong suit.

14 Q. When you were picking the brands for
15 this business idea you had to purchase phones
16 through the website, I imagine that picking the
17 brand was important to you. What involvement
18 did you have in picking the Crapple name?

19 A. I was just a fan of the word crap.
20 Anything that got mixed with crap I'm sure I
21 would have been satisfied with. I think we
22 went with it because of the inside joke among
23 us. Him and his brother, they would add L to
24 the end of everything in their conversation
25 because of that broken phone.

1 ask whether it would ever exist. I was just
2 asking whether it existed because he was giving
3 that as an explanation of how people would give
4 meaning to the Crapple mark when it resulted
5 from an inside joke that was known between
6 three people. I will continue.

7 BY MS. ROACH:

8 Q. What does Crapple mean?

9 A. Crapple means a broken telephone.

10 Q. Would it have the same meaning if it
11 were spelled differently?

12 A. Yeah. It could.

13 Q. The alternative spellings you were
14 discussing earlier for the Crapple mark, would
15 it have the same meaning?

16 A. So like La Crapple, El Crapple,
17 El Crap, yeah. I think aesthetically Crapple
18 looks the best. When you double letters and
19 you put things in the right formation, it is
20 definitely the most catchy. Like Crapple comes
21 off your mouth very smoothly. It is an easy
22 word to say, easy to remember. It is a lot
23 better sounding than Crap or El Crap, but they
24 all work.

25 Q. What do the double letters have to

1 do with the way you say the word Crapple?

2 A. I just like things in pairs. I like
3 seeing two L's next to each other, hearing two
4 L's next to each other.

5 Q. How can you hear two L's next to
6 each other?

7 A. Yellow.

8 Q. But how do you hear the difference
9 between one or two letters in that context?

10 A. You hear it just by the way you read
11 it. If you would read yellow and it had one L,
12 you would probably think twice before reading
13 it because it is not how you typically see
14 yellow.

15 Q. When you hear it spoken, can you
16 hear the difference between one or two letters?

17 A. You might. If you are hearing
18 somebody read something they have never read
19 before, there might be hesitation how they
20 speak.

21 Q. Does any of that factor into how you
22 decided to spell the Crapple mark?

23 A. No.

24 Q. What factored into how you decided
25 to spell the Crapple mark?

1 A. Not that I can recall.

2 Q. Did you ever discuss with Daniel
3 Kelman the similarity between the Crapple mark
4 and Apple, Inc.'s Apple mark?

5 MR. KELMAN: Objection.
6 Attorney/client privilege.

7 MS. ROACH: It was mentioned
8 that there was a discussion to this effect in
9 the interrogatory responses, which I will get
10 to later, and we will address that issue then.
11 BY MS. ROACH:

12 Q. What were Ninja Entertainment's
13 plans for the Crapple mark when it adopted it?

14 A. To the mark, the logo or the name?

15 Q. The Crapple word mark. When I say
16 Crapple mark, I mean the Crapple word mark.

17 A. To have a website that purchases
18 broken cell phones.

19 Q. Did Ninja Entertainment plans for
20 the Crapple mark ever change from that plan you
21 just stated?

22 A. I think at one point we were
23 thinking of just selling crap in vending
24 machines, like things people need.

25 Q. Was that something that you pursued

1 trademark. I don't remember any of the
2 paperwork.

3 Q. This application was filed with an
4 Intent To Use Application; is that correct?

5 A. Unsure.

6 Q. Do you know what an Intent To Use
7 Application is?

8 A. I do not.

9 Q. In July 2011, what goods and
10 services did Ninja Entertainment Holdings, LLC
11 intend to use the Crapple mark with?

12 A. What were we going to take in on the
13 website?

14 Q. What goods or services were you
15 going to use the Crapple mark in connection
16 with in commerce?

17 A. I think it was going to be the name
18 of the domain that we were going to use to
19 purchase the broken telephones.

20 Q. In July 2011 when this trademark
21 application was filed, did you intend to use
22 the Crapple mark on any goods?

23 A. Like put a sticker on it did you
24 mean?

25 Q. Either on or in connection with

1 goods. Let me rephrase.

2 A. Yes.

3 Q. In July 2011 when this Trademark
4 Application was filed, did Ninja Entertainment
5 Holdings, LLC intend to use the Crapple mark to
6 identify goods or services it was going to
7 offer for sale?

8 A. The one thing I remember, I think we
9 were going to have headphones that we
10 considered putting the actual logo on.

11 Q. When you say logo, what do you mean?

12 A. So like if you buy a little parrot
13 earbuds that would fit in your ear, having a
14 logo on the earpiece.

15 Q. And when you say logo, what logo are
16 you referring to?

17 A. The orange.

18 Q. Could you be more specific?

19 A. The Crapple orange.

20 Q. Is that the Crapple orange that is
21 depicted on --

22 A. There wasn't much discussion about
23 it. The idea went dead.

24 Q. When you were saying that you
25 considered offering headphones that would have

1 a logo on them, was the logo you were referring
2 to the image of the orange with the trollface
3 inside it and the antenna that appears on the
4 upper left-hand corner of the web page shown on
5 Exhibit 5?

6 A. No, no, no. Just the color orange.
7 Like they were going to be orange.

8 Q. My question is in July 2011 when
9 this Trademark Application was filed, did Ninja
10 Entertainment Holdings intend to use the mark
11 Crapple in connection with any goods that it
12 was going to offer for sale?

13 A. I don't think so. It might have
14 been an idea on the table, but the focus was
15 using Crapple as a mark to take in merchandise.

16 Q. In July 2011 when the Trademark
17 Application, and when I say the Trademark
18 Application I'm referring to Ninja
19 Entertainment Holdings, LLC's application for
20 the mark Crapple which is Serial No. 85379096;
21 do you understand that?

22 A. Uh-huh.

23 Q. In July 2011 when the Trademark
24 Application was filed, did Ninja Entertainment
25 plan to use the Crapple mark on cell phones?

1 A. So to be more specific, you are
2 saying if I would sell a cell phone, would the
3 box the cell phone comes in have a trademark
4 mark on it?

5 Q. I'm actually not asking it that
6 specifically. Let me try again. When I say
7 use a mark in connection with goods, what I
8 mean is use a trademark to identify someone as
9 the source of goods that are offered for sale.

10 A. I think we actually wanted to be --
11 we had a lot of discussion. It was an idea to
12 use Crapple for both receiving and selling, but
13 at the end of the day we looked at our
14 competitors like Gazelle and NextWorth, who
15 typically keep their sale channels private as
16 proprietary information, so we decided not to
17 use the trademark as a way to sell merchandise,
18 just as a way to take it in.

19 Q. Okay. When was the decision made?

20 A. Dates I'm not sure. I'm not even
21 sure if that was a decision that was made. It
22 is just how I felt. I'm not sure if that was a
23 company decision that we made that decision or
24 if it was just the way I felt.

25 Q. When you felt when?

1 A. Dates, so anywhere from May 2011 to
2 May 2012.

3 Q. Let me back up. In July 2011 when
4 this application was filed, did Ninja
5 Entertainment Holdings at that time plan to use
6 the Crapple mark in connection with cell phones
7 offered for sale?

8 A. I don't think so.

9 Q. Does Ninja Entertainment currently
10 have plans to use the Crapple mark in
11 connection with cell phones offered for sale?

12 A. I don't understand how you use the
13 trademark as a connection for selling. If you
14 are buying a Samsung phone, you are buying a
15 Samsung phone. If you are buying a Nokia, you
16 are buying a Nokia. If you are buying an
17 Apple, you are buying an Apple. How do you use
18 the Crapple mark to sell a Samsung phone?

19 Q. You could, for example -- to use the
20 example of a phone, if you have a phone and you
21 have your plan through a particular provider, a
22 carrier as you mentioned earlier, and you
23 bought your phone through that carrier, it
24 might have that carrier's trademark on it as
25 well.

1 A. So it would be let's say Verizon and
2 Samsung.

3 Q. I'm just giving you an example where
4 a mark could be used on a product besides the
5 mark of a manufacturer, for example, but that
6 is not to be exclusive.

7 A. But our plans aren't to sell service
8 or to sell our own technology. Our plan is to
9 sell secondhand technology. We couldn't really
10 apply our mark to someone else's technology.

11 Q. Let me back up. Does Ninja
12 Entertainment currently have any plans to use
13 the Crapple mark on cell phones?

14 A. No. It has no current plan to use a
15 mark on any cell phones.

16 Q. Does Ninja Entertainment have any
17 current plans to use the Crapple mark on
18 packaging on cell phones?

19 A. No.

20 Q. Does Ninja Entertainment currently
21 have any plans to use the Crapple mark in any
22 way in connection with cell phones that it
23 would offer for sale?

24 A. Currently, no.

25 Q. Did Ninja Entertainment in 2011 when

1 this application was filed have plans to use
2 the Crapple mark in connection with -- can we
3 go off the record?

4 (Recess taken.)

5 MS. ROACH: I was just going
6 to note for the record that we went off the
7 record for a moment because we appeared to have
8 lost our connection with applicant's counsel on
9 the phone, but he is back with us now and so we
10 are resuming the deposition on the record.

11 BY MS. ROACH:

12 Q. I'm going to back up because I kind
13 of lost my train of thought. In 2011 when the
14 application was filed, did Ninja Entertainment
15 plan to use the Crapple mark in connection with
16 cell phones that it would sell?

17 A. No. Like you are talking about
18 Samsung is famous. Apple is famous. If the
19 products sell themselves, there is no reason to
20 attach a trademark to sell a product.

21 Q. In 2011 did Ninja Entertainment plan
22 to use the Crapple mark in connection with
23 mobile phone accessories that it would sell?

24 A. Yes.

25 Q. What mobile phone accessories did

1 Ninja Entertainment Holdings plan to use the
2 Crapple mark in connection with in 2011?

3 A. Basic necessities you need for
4 phones. Screen protectors, headphones, cases.

5 Q. And the screen protectors,
6 headphones and cases that Ninja Entertainment
7 intended to use the Crapple mark in connection
8 with in 2011, would those be new products?

9 A. They would be, yeah. They would be
10 new products.

11 Q. In 2011, did Ninja Entertainment
12 have a relationship with a manufacturer or
13 someone who offered screen protectors,
14 headphones and cases that Ninja Entertainment
15 could offer under the Crapple mark?

16 A. Ninja Entertainment was offering
17 cases but had no plans of putting, had nothing
18 past theory of actually putting a Crapple mark
19 on those items.

20 Q. Does Ninja Entertainment currently
21 have plans to use the Crapple mark on mobile
22 phone accessories?

23 A. No.

24 Q. In 2011 when the application was
25 filed, did Ninja Entertainment plan to use the

1 Crapple mark in connection with headphones or
2 earphones?

3 A. Can you repeat the question?

4 Q. Sure. In 2011 when Ninja
5 Entertainment filed the application, did it
6 plan to use the Crapple mark in connection with
7 headphones or earphones?

8 A. It was an idea initially, like very
9 cheap, rented accessories for cell phones, but
10 we decided just purchased phones to focus the
11 direction a little bit more.

12 Q. In 2011 when the application was
13 filed, did Ninja Entertainment plan to use the
14 Crapple mark on headphones and ear phones?

15 A. Let's define plans. Conversations
16 occurred, but the plan was always I believe to
17 take in merchandise. Any time you have
18 business, you do a brainstorm and 100 ideas are
19 going to come out. There is actually a
20 difference between brainstorming and actually
21 having a direction of where you want to go.

22 Q. In 2011, there wasn't a concrete
23 plan on behalf of Ninja Entertainment to use
24 the Crapple mark in connection with headphones
25 or ear phones?

1 A. It was an idea.

2 Q. Just a general idea?

3 A. Yeah.

4 Q. Does Ninja Entertainment currently
5 have plans to use the Crapple mark on
6 headphones or earphones?

7 A. No.

8 Q. In 2011 when the application was
9 filed, did Ninja Entertainment plan to use the
10 Crapple mark on computer game software or in
11 connection with computer game software?

12 A. Absolutely not.

13 Q. Does Ninja Entertainment currently
14 have plans to use the Crapple mark in
15 connection with computer game software?

16 A. No.

17 Q. In 2011 when the application was
18 filed, did Ninja Entertainment plan to use the
19 Crapple mark on hand-held computers?

20 A. No.

21 Q. Does Ninja Entertainment currently
22 have plans to use the Crapple mark in
23 connection with hand-held computers?

24 A. No.

25 Q. In 2011, did Ninja Entertainment

1 have plans to use the Crapple mark in
2 connection with personal computers?

3 A. No.

4 Q. Does Ninja Entertainment Holdings
5 currently have plans to use the Crapple mark in
6 connection with personal computers?

7 A. No.

8 Q. In 2011, did Ninja Entertainment
9 plan to use the Crapple mark in connection with
10 loud speakers?

11 A. No.

12 Q. Does Ninja Entertainment currently
13 have plans to use the Crapple mark in
14 connection with loud speakers?

15 A. What are loud speakers?

16 Q. What do you think loud speakers are?

17 A. I think loud speakers are like subs
18 for your car.

19 Q. We will just use the word speakers.
20 Would that be better? In 2011, did Ninja
21 Entertainment plan to use Crapple in connection
22 with speakers? Audio speakers?

23 A. No.

24 Q. Do they currently have plans to use
25 the Crapple mark in connection with audio

1 speakers?

2 A. Now I'm thinking about subs. I'm
3 just kidding. No.

4 Q. In 2011, did Ninja Entertainment
5 plan to use the Crapple mark in connection with
6 microphones?

7 A. No.

8 Q. Does Ninja Entertainment currently
9 have plans to use the Crapple mark in
10 connection with microphones?

11 A. No.

12 Q. In 2011, did Ninja Entertainment
13 plan to use the Crapple mark in connection with
14 CD players?

15 A. No. Who wrote this?

16 Q. Does Ninja Entertainment currently
17 have plans to use the Crapple mark in
18 connection with CD players?

19 A. No.

20 Q. In 2011, did Ninja Entertainment
21 plan to use the Crapple mark on electronic
22 devices to charge and secure tablet PCs?

23 A. No.

24 Q. Does Ninja Entertainment currently
25 have plans to use the Crapple mark in

1 connection with electronic devices to charge
2 and secure tablet PCs?

3 A. No.

4 Q. Other than the application at issue
5 in this proceeding, has Ninja Entertainment
6 filed any other applications to register the
7 Crapple mark?

8 A. No. Not that I know of actually.

9 Q. Are you the owner of Ninja
10 Entertainment?

11 A. I am.

12 Q. If Ninja Entertainment filed an
13 application to register a mark, would you be
14 aware of it?

15 A. No.

16 Q. Who would be aware of it?

17 A. Well, how recently?

18 Q. Since you have been the owner of
19 Ninja Entertainment, has it filed any
20 applications to register the Crapple mark other
21 than the one that is at issue in this
22 proceeding?

23 A. I'm unsure. I'm not the only
24 authorized signer in the company.

25 Q. Who are the other authorized signers

1 domain name is registered to Ninja
2 Entertainment or Daniel Kelman?

3 MR. KELMAN: Objection. You
4 already asked the question.

5 MS. ROACH: Objection noted.

6 Q. Did Ninja Entertainment have any
7 involvement with deciding the content of the
8 crapple.com website?

9 A. Define Ninja Entertainment.

10 Q. Ninja Entertainment Holdings, LLC?

11 A. When you say that, did they have any
12 decision in the content, what does that mean?

13 Q. Did anyone who represented Ninja
14 Entertainment Holdings, LLC have involvement in
15 determining the content of the crapple.com
16 website?

17 A. Yes. Daniel.

18 Q. Did anyone else at Ninja
19 Entertainment Holdings, LLC have any
20 involvement in determining the content of the
21 crapple.com website?

22 A. No.

23 Q. The Trademark Application to
24 register the Crapple mark was filed in the name
25 of Ninja Entertainment Holdings, LLC; is that

1 correct?

2 A. That's correct.

3 Q. It was not filed in the name of
4 Daniel Kelman; is that correct?

5 A. If that's what you are telling me.

6 Q. Do you want to look at it?

7 A. Yeah. It is Ninja Entertainment
8 Holdings, LLC.

9 Q. And you are the owner of the Ninja
10 Entertainment Holdings, LLC?

11 A. I am.

12 Q. But you were not involved in
13 determining the content of the crapple.com
14 website?

15 A. That's correct.

16 Q. And you were not involved in the
17 decision of how to spell the Crapple mark; is
18 that correct?

19 A. That's correct.

20 Q. And you were not involved in
21 determining decisions of what imagery to use on
22 the crapple.com website; is that correct?

23 A. That's correct.

24 Q. And you were not involved in
25 determining whether or not products would be

1 sold under the Crapple mark?

2 A. I was involved in discussions, but I
3 never gave the final input.

4 Q. So you as the owner of Ninja
5 Entertainment Holdings, LLC, what was your
6 involvement with respect to the crapple.com
7 website?

8 A. Nothing. My priorities were in the
9 retail operation, not in expanding our ventures
10 elsewhere. Very similar in 2012, we started
11 two startups, the Red Booth Repair and another
12 company called Orro. Both of those companies
13 have websites. Both of those companies are
14 businesses. Neither of them do I have any
15 active involvement. We just have the companies
16 fund the endeavor.

17 Q. Who controlled the content of the
18 crapple.com website after Daniel Kelman left
19 Ninja Entertainment?

20 A. I'm unsure.

21 Q. Did you control the content of the
22 crapple.com website after Daniel Kelman left
23 Ninja Entertainment?

24 A. I guess I owned it, but I have no
25 idea what was going on.

1 Q. After Daniel Kelman left Ninja
2 Entertainment, did you have any involvement on
3 the use of the Crapple mark?

4 A. No.

5 Q. After Daniel Kelman left Ninja
6 Entertainment, did Ninja Entertainment have any
7 involvement in the use of the Crapple mark?

8 A. Yeah. We filed for a trademark, and
9 we were waiting to find out if we got the
10 trademark or not because we can't do business
11 without that trademark.

12 Q. I'm asking about the use of the mark
13 as opposed to the trademark application.

14 A. Yeah. We didn't use it for
15 anything.

16 MR. KELMAN: Objection. The
17 question is irrelevant because there was no use
18 of the mark at that time, the time I left Ninja
19 Entertainment. You are asking an irrelevant
20 question.

21 MS. ROACH: That is actually
22 testimony that I didn't get from Mr. Barr today
23 because he wasn't able to tell me when the
24 website ceased being available. The purpose of
25 this deposition is to get Mr. Barr's testimony

1 A. Not that I'm aware of.

2 Q. -- that have to do with alternative
3 names that were considered when adopting the
4 Crapple mark?

5 A. Not that I'm aware of.

6 Q. Are you aware of any documents,
7 either hard copy or electronic including email
8 communications, that have to do with how the
9 Crapple mark would be used?

10 A. I'm not aware.

11 Q. Are you aware of any documents, hard
12 copy or electronic including email
13 communications, that address the use of the
14 Crapple mark?

15 A. I'm not aware.

16 Q. Are you aware of any hard copy or
17 electronic files that show the content of the
18 crapple.com website?

19 A. The papers that you showed me.

20 Q. Are you aware of any others?

21 A. No.

22 Q. Have you ever seen any hard copy or
23 electronic files depicting the content of the
24 crapple.com website?

25 A. I think I have seen the website

1 live, and I feel like I have seen a printout
2 like you showed me before.

3 Q. When you say you have seen a
4 printout like I have shown you before, do you
5 know where that document is?

6 A. No idea.

7 Q. Are you aware of any instances in
8 which there were communications or suggestions
9 that there was a connection between the
10 crapple.com website and Apple, Inc.?

11 A. I'm not familiar.

12 Q. Are you aware of any instances in
13 which someone communicated that they believed
14 that there was an association between the
15 crapple.com website and Apple, Inc.?

16 A. No, just the connection I told you
17 earlier where I remember a conversation where
18 somebody told me Crapple rhymed with Apple.

19 Q. Did they tell you anything more
20 about it that you recall from that
21 conversation?

22 A. No. It wasn't that interesting.

23 Q. Did they say what they thought about
24 the fact that the Crapple mark and the Apple
25 mark were similar?

1 A. It wasn't that interesting. It was
2 like two names that sound the same. How many
3 words rhyme in the dictionary if you put it
4 together? Thousands.

5 Q. Right. I'm just trying to ask about
6 that particular conversation. What else do you
7 remember from it?

8 MR. KELMAN: Objection. You
9 have already asked this question earlier in the
10 proceeding.

11 Q. What else do you remember from the
12 conversation in which someone suggested to you
13 that there was a connection between the Crapple
14 mark and the Apple mark?

15 A. Just that the two words rhyme.

16 Q. That the Crapple word and the Apple
17 word mark rhyme?

18 A. Yeah, and we discussed other word
19 options like we discussed earlier like adding
20 la at the beginning or el to the end to make it
21 Crapel, but we already discussed that.

22 MS. ROACH: If we can take a
23 short break. Is that okay, Daniel, if we take
24 a 15-minute break?

25 MR. KELMAN: Sure. That works

1 for me.

2 (Recess taken.)

3 BY MS. ROACH:

4 Q. Mr. Barr, whose idea was it to
5 create a website to purchase used or broken
6 smart phones?

7 A. Dan Kelman's.

8 Q. I'm going to direct your attention
9 back to Exhibit 15, which was Applicant's
10 Responses to Apple's Discovery Request dated
11 January 30, 2013. Do you see the response to
12 No. 1 where it says, I'm going to read from it,
13 "Milton Barr is in the business of buying and
14 selling electronics. Milton hit upon an idea
15 to purchase more electronics: create a website
16 offering to purchase items.

17 "Milton decided to create such a
18 website specializing in the purchase of
19 smartphones, reasoning that the market for
20 smartphones was rapidly growing and that people
21 would be amenable to second hand purchase as
22 the price of new smartphones remains
23 comparatively high.

24 "Daniel had for quite some time been
25 Milton's business attorney and at times

1 partnered with him in business. Daniel agreed
2 to help with the matter."

3 Mr. Barr, you just testified that it
4 was Daniel Kelman's idea to create --

5 MR. KELMAN: Excuse me.
6 Objection. Can you read that again. I don't
7 believe the statement says that it was his idea
8 or not. It said that he decided to start the
9 website. It doesn't mention -- there is plenty
10 of room in that statement to say that it was
11 decided in connection with other people. You
12 are leading the witness.

13 MS. ROACH: You can object to
14 the nature of my question. You can ask me to
15 reread it, but please do not testify about what
16 I'm asking Mr. Barr about.

17 MR. KELMAN: I'm telling you
18 why I'm objecting.

19 MS. ROACH: You can object.
20 What is the basis of your objection? Is it the
21 form of my question? Is it what I just read?
22 If you are objecting to what I'm going to
23 ask --

24 MR. KELMAN: It is a leading
25 question.

1 MR. KELMAN: Okay.

2 BY MS. ROACH:

3 Q. You have the document in front of
4 you, Exhibit 15?

5 A. I do.

6 Q. You just testified that the person
7 whose idea it was to create a website to
8 purchase used and broken smartphones was Daniel
9 Kelman?

10 A. The initial concept where it became
11 like who had the light bulb that clicked, it
12 was Daniel.

13 Q. And Exhibit 15, the discovery
14 response that I just read to you, it says,
15 "Milton hit upon an idea to purchase more
16 electronics: create a website offering to
17 purchase items. Milton decided to create such
18 a website."

19 Is that inconsistent with your
20 testimony today that Daniel Kelman was the one
21 that had the idea to create the website?

22 A. It seems a little bit ambiguous.
23 One is taking momentum and actions and moving
24 forward, and one is who had the original idea.
25 They are not the same.

1 Q. Right. My question to you earlier
2 was whose idea was it, and you testified that
3 it was Daniel Kelman's.

4 A. Yeah.

5 Q. I read to you the response to the
6 discovery request that was served on us by
7 Ninja Entertainment Holdings which states,
8 "Milton hit upon an idea to purchase more
9 electronics: create a website offering to
10 purchase items."

11 A. That doesn't mean I thought of the
12 idea. I came across an idea. It doesn't
13 clearly state where the origin came from.

14 Q. So I should interpret this discovery
15 response to say that in fact Daniel Kelman came
16 up with the idea to create the website?

17 A. Yes.

18 Q. So Daniel Kelman came up with the
19 idea to create the website?

20 MR. KELMAN: Objection.
21 Objection to your last question.

22 Q. So Daniel --

23 MR. KELMAN: You interpret it
24 how you want to interpret it. It has the
25 meaning that it has.

1 MS. ROACH: Understood. I'm
2 going to continue.

3 BY MS. ROACH:

4 Q. Daniel Kelman came up with the idea
5 to create a website that would purchase used
6 and broken smart phones; is that correct?

7 A. That's correct.

8 Q. When did Daniel Kelman come to you
9 with the idea to create a website that would
10 purchase used and broken smart phones?

11 A. We probably started talking about it
12 close to when we first met. He was very
13 interested in e-commerce.

14 Q. When did you first meet Daniel
15 Kelman?

16 A. In person?

17 Q. When did you first meet that you had
18 this conversation where he communicated to you
19 his idea to create a website that would
20 purchase used or broken cell phones?

21 A. I'm not sure.

22 Q. But it is your testimony that it was
23 Daniel Kelman's idea to create the website that
24 would purchase used and broken cell phones; is
25 that correct?

1 of the idea to create a website that purchased
2 used and broken cell phones that became the
3 crapple.com website?

4 A. No.

5 Q. What does Crapple mean?

6 A. Crapple means a broken phone.

7 Q. Why wouldn't you just use the word
8 broken phone?

9 A. So crap is a very bold word. A lot
10 of people are afraid to be bold in the
11 marketplace. Market shares are already very
12 hard to take when you are not first in the
13 market.

14 Gazelle is a company that everybody
15 knows. They did a great job first to market.
16 NextWorth also did an excellent job coming to
17 the marketplace afterwards, but neither of
18 those companies specialize in just taking in
19 broken phones. They are both fighting for the
20 cream of the crop, so by coming in with a
21 company associated with crap, you can really
22 separate yourself from the competition that is
23 looking for cream.

24 Q. Why wouldn't you just use the word
25 crap to refer to the service you were providing

1 for taking in broken phones?

2 A. I don't feel like crap is a very
3 polite word to say. By adding a beginning or
4 end to crap, it gives it a commercial use.

5 Q. Is there any particular reason for
6 the ending that was added to the crap word to
7 create the Crapple mark?

8 A. Like the Crapple?

9 MR. KELMAN: Objection. You
10 asked the question earlier and he answered
11 earlier.

12 MS. ROACH: I understand.

13 Q. Please respond to the question.

14 A. The crap, you are still saying crap.
15 You want to make Crapple as polite as possible.

16 Q. Does adding P-L-E to a word make it
17 polite?

18 A. In this case, yes.

19 MR. KELMAN: Objection. You
20 asked this line of questioning earlier to my
21 question. He gave a story, if you recall. I
22 don't want to go into it, but you are asking my
23 client the same question repeatedly. You are
24 not allowed to ask the same questions over and
25 over and prolong this deposition longer than it

1 waste everyone's time searching through the
2 transcript. We want to waste everyone's time
3 asking the same question over and over.

4 MS. ROACH: I would just like
5 to continue with the deposition. We will just
6 continue with the deposition, and we will get
7 this through, and you can lodge your objections
8 and make whatever arguments you want to make
9 based on the transcript. It has already been
10 recorded, and your objection is noted.

11 MR. KELMAN: Okay. My
12 objection is noted, and I'm asking again to
13 please not ask the same question repeatedly or
14 I'm going to instruct my client to give the
15 same response.

16 MS. ROACH: Please do not
17 instruct your client how to respond to my
18 questions.

19 MR. KELMAN: My client doesn't
20 need to respond to duplicative questions, with
21 all due respect.

22 MS. ROACH: Okay. I'm going
23 to continue with the deposition.

24 BY MS. ROACH:

25 Q. You stated earlier that Crapple

1 means a broken phone; is that correct?

2 A. Correct.

3 Q. Does Crapple include Apple phones
4 that are broken?

5 A. Is an Apple phone a phone?

6 Q. Does Crapple include Apple phones
7 that are broken?

8 A. Well, if Crapple refers to broken
9 phones and Apple is a phone, then yes.

10 Q. So your testimony is that Crapple
11 means broken phone?

12 A. Uh-huh, and that Apple makes phones,
13 so clearly there is going to be examples where
14 there are going to be Apple products that are
15 Crapples.

16 Q. Thank you. Mr. Barr, during the
17 breaks today did you discuss the testimony you
18 have given here with anyone?

19 A. No.

20 Q. Are there any answers to my
21 questions that you wish to change before we
22 close this deposition?

23 A. No.

24 Q. Is there any information I asked you
25 about that you remember now that you didn't

1 recall when I asked the question earlier in the
2 deposition?

3 A. No.

4 MS. ROACH: I think we are
5 finished here. Thank you very much for your
6 attendance today.

7 (Signature not waived.)

8 (Whereupon, the above-entitled
9 matter was concluded at 4:30 p.m.)

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DEPOSITION ERRATA SHEET

Assignment No. 458655

Case Caption: APPLE, INC. vs. NINJA
ENTERTAINMENT HOLDINGS, LLC

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury
that I have read the entire transcript of
my Deposition taken in the captioned matter
or the same has been read to me, and
the same is true and accurate, save and
except for changes and/or corrections, if
any, as indicated by me on the DEPOSITION
ERRATA SHEET hereof, with the understanding
that I offer these changes as if still under
oath.

Signed on the _____ day of

_____, 20____.

MILTON ISAAC BARR

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MILTON ISAAC BARR

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MILTON ISAAC BARR

1 COMMONWEALTH OF PENNSYLVANIA)
2 COUNTY OF ALLEGHENY)

3 I, Vivian D. Macurak, a notary public
4 in and for the Commonwealth of Pennsylvania, do
5 hereby certify that the witness, MILTON ISAAC
6 BARR, was by me first duly sworn to testify the
7 truth, the whole truth, and nothing but the
8 truth; that the foregoing deposition was taken
9 at the time and place stated herein; and that
the said deposition was recorded
stenographically by me and then reduced to
typewriting under my direction, and constitutes
a true record of the testimony given by said
witness, all to the best of my skill and
ability.

10 I further certify that the inspection,
11 reading and signing of said deposition were not
12 waived by counsel for the respective parties
13 and by the witness and if after 30 days the
14 transcript has not been signed by said witness
that the witness received notification and has
failed to respond and the deposition may then
be used as though signed.

15 I further certify that I am not a
16 relative, or employee of either counsel, and
that I am in no way interested, directly or
indirectly, in this action.

17 IN WITNESS WHEREOF, I have hereunto
18 set my hand and affixed my seal of office this
19 8th day of August, 2013.
20

21 S/Vivian D. Macurak
22 -----
23 Vivian D. Macurak
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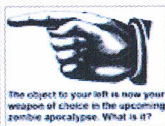
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Updated about a year ago by [Brad](#).

Added 4 years ago by [Funky Raspberry](#).

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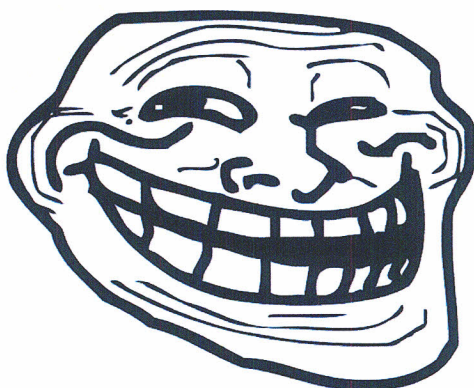
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problem?

About

Trollface is a black and white drawing of a face with a large mischievous grin that is meant to portray the expression someone makes while [trolling](#). Posting a Trollface image into a forum thread is often used to claim that someone was being fooled or intentionally angered. The face commonly appears in [rage comics](#) indicating that the character is being mischievous in some way.

Origin

A MSPaint comic made by deviantArt^[1] user Whyne about the pointless nature of trolling on 4Chan's /v/, was uploaded on September 19th, 2008.

Meme

Status:

Confirmed

Year

2008

Origin

DeviantART

Tags

problem, coolface, trollface, image, 4chan, trolling

Additional References

Encyclopedia Dramatica

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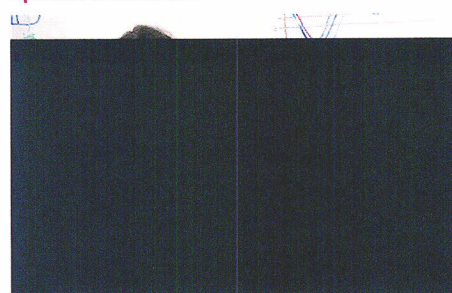
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In case you've missed it, watch Know Your Meme's report on [Autotune \(feat. Weird Al Yankovic\)](#)! For related discussions, check out the [episode comments](#).



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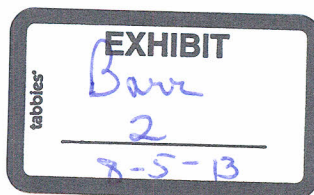
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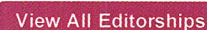


James
Nic Cage Fan & Pony Hater



Brad
Le Editor





Stupid uneducated opinion

>>>18856739
You are fucking retarded.

LOL YOU I TROLL



Trollface has also been called “coolface”, which came from a comic posted to 4chan after the original trollface:



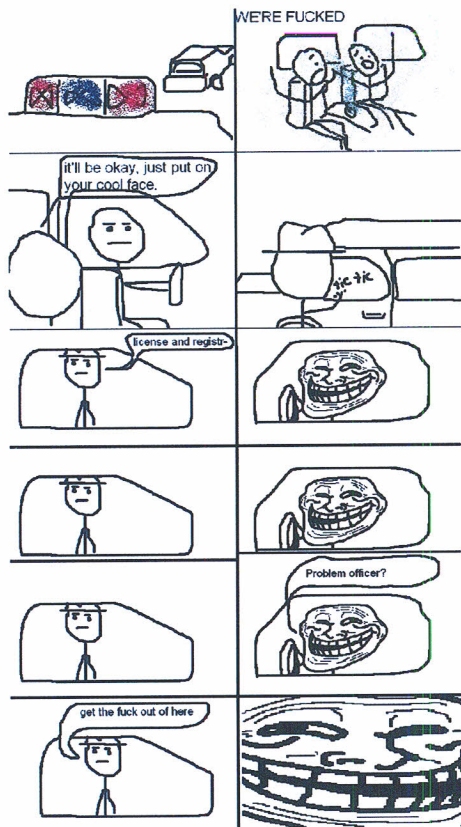
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TransUnion.

The coolface comic was posted to Ebaumsworld^[2] on November 30th, 2008. The first Urban Dictionary^[3] definition for "trollface" was posted on August 1st, 2009.

Derivatives using the face can be found on Tumblr^[4], Memebase^[5], and in rage comics in the f7u12^[6] subreddit. A Facebook^[7] fan page has over 96,000 'likes' as of July 18th, 2011.

Search

Interest over time. Web Search. Worldwide, 2004 - present.

trollfacetroll facecoolface200520072009201120132020404060608080100100

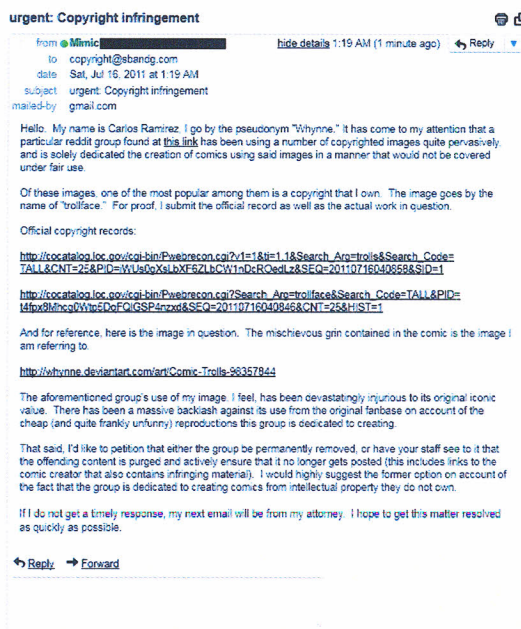


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Search queries did not pick up until January of 2009, several months after the original deviantArt posting.

Whyne Claims Copyright Infringement

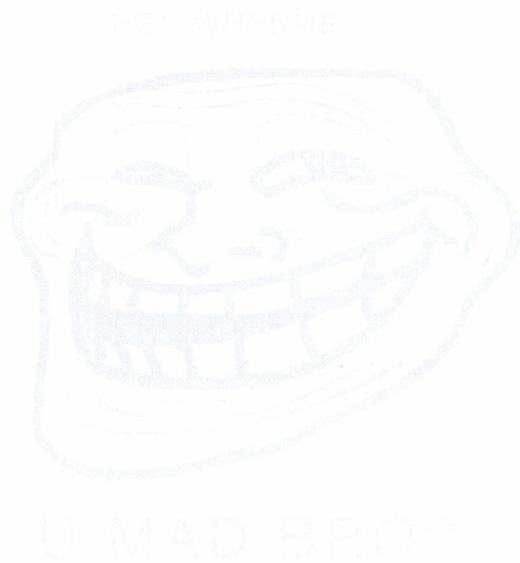
On July 16th, 2011, a screenshot of an email from a man named Carlos Ramirez claiming to be Whyne was posted to Reddit.^[8] The email stated that the use of Trollface on Reddit violated his copyright on the image, and that he would like to have the subreddit removed.



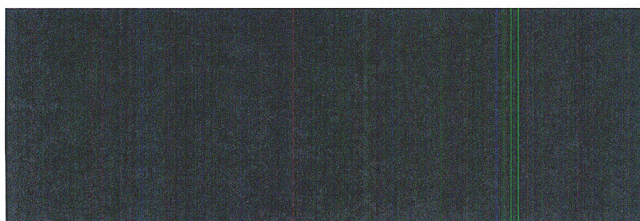
The email was reposted to f7u12^[10] in a thread titled "Looks like f7u12 is done". A Redditor named Whyne^[9] repounded to the thread saying:

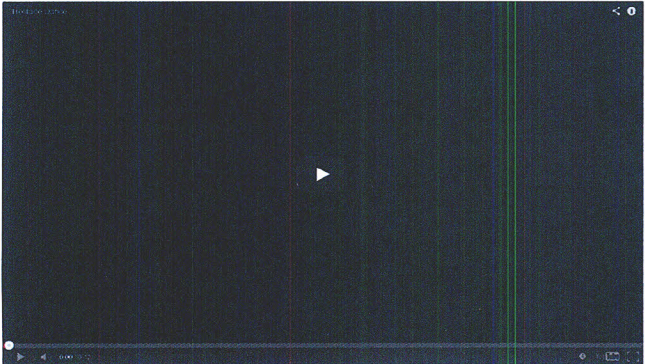
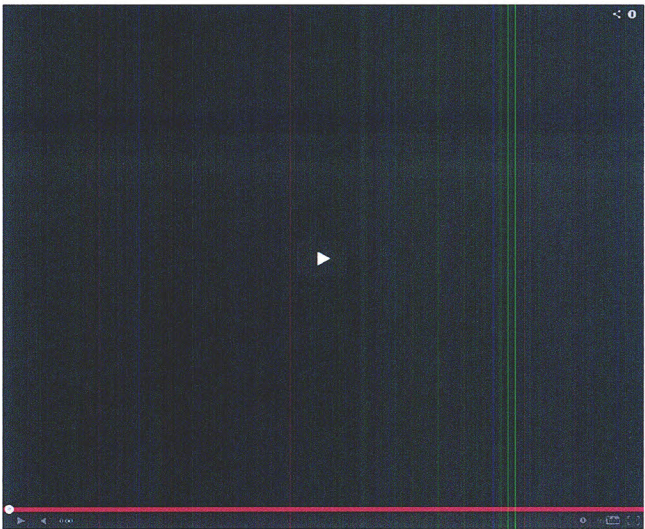
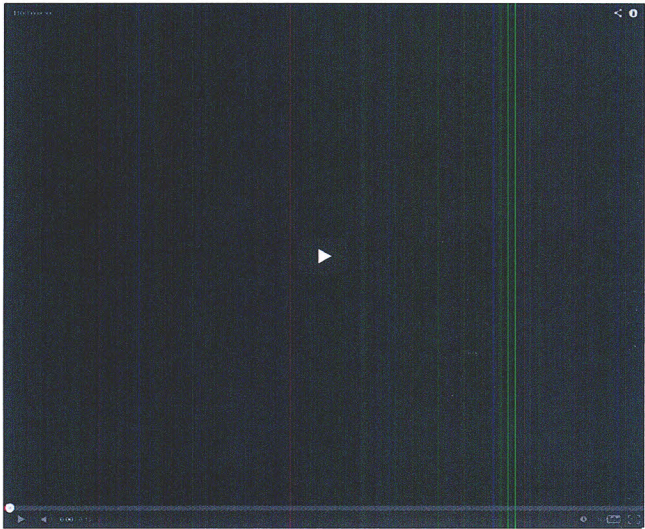
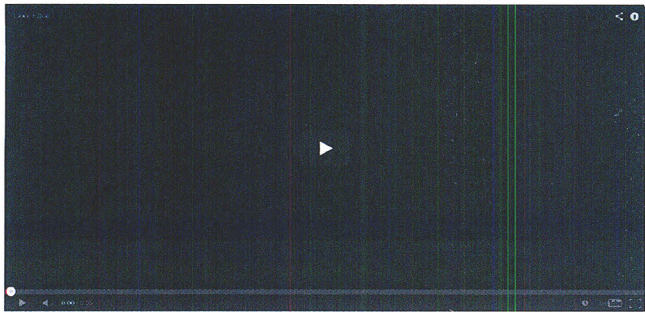
You know what also makes me happy? Trolling reddit and seeing a shitstorm like this develop.

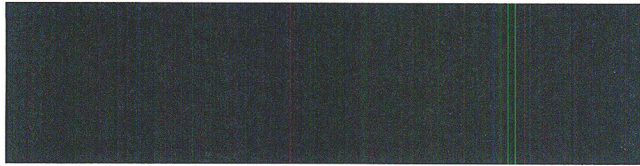
The background image for the f7u12 pages was changed to a picture of trollface with the text "HEY WHYNE... U MAD BRO?":



Derivatives







External References

- [1] Deviant Art – [Comic Trolls](#) / 9/19/08
- [2] Ebaumsworld – [Cool Face](#)
- [3] Urban Dictionary – [Trollface](#)
- [4] Tumblr – [#trollface](#)
- [5] Memebase – [Troll Face](#)
- [6] Reddit – [f7u12](#)
- [7] Facebook – [Trollface](#)
- [8] Reddit – [Whyne](#), creator of "trollface," calls for it to be removed from reddit for distasteful use
- [9] Reddit – [Whyne](#)
- [10] Reddit – [Looks like f7u12 is done](#)

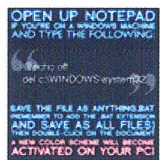
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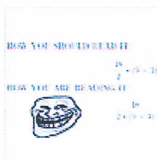
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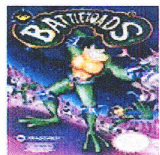
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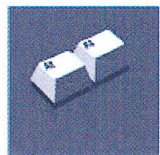
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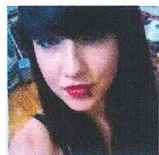
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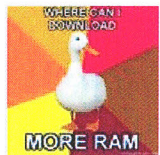
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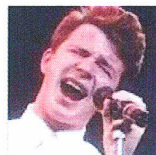
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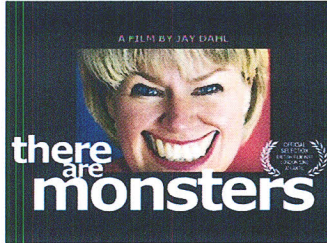
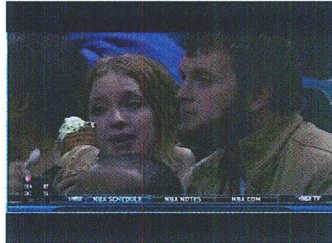
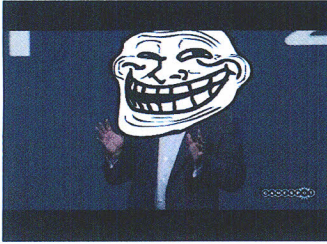
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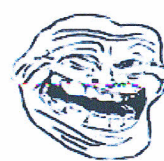
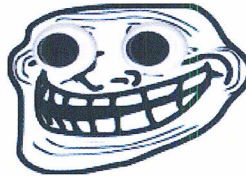
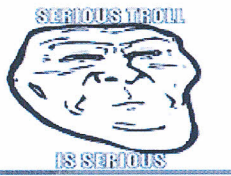
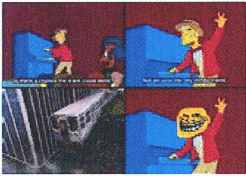
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Scott Adams

First of all, you too are both retarded beyond all common comprehension, and you saying you come from an Extremely dangerous part of New Jersey is like saying "I come from an extremely dangerous section of a Hospital" that means nothing at all

Reply · 37 · Like · September 20, 2011 at 6:22pm



Scott Adams

Russell Hanson fail troll is fail

Reply · 6 · Like · October 16, 2011 at 6:35am



Nex Gen
Russell Hanson u suck
Reply · 4 · Like · October 16, 2011 at 7:51pm



Russell Hanson
You suck Penis.
Reply · 10 · Like · October 29, 2011 at 7:51pm

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Christopher Scog · Top Commenter
I think trollface is dumb and your face is dumb er!!!!!!!!!!!!!!!!!!!!
Reply · 21 · Like · August 4, 2011 at 10:31am



Christopher Scog · Top Commenter
No I'm not. Why would I be dangerous? I am simply a young student. Please do not generate such slander.
Reply · 3 · Like · August 8, 2011 at 2:31pm



Christopher Scog · Top Commenter
What? What is this? I don't even...
I did not make such a comment!
Reply · Like · August 8, 2011 at 10:40pm



Andrew Vega
U Mad chriss??
Reply · 30 · Like · August 10, 2011 at 12:39pm

Top Comments



Troll Face
2 years ago
on teh internets we dont believe in copyright
+75 · Reply



ZillieZephyr
2 years ago
Sorry Whyne. Or should I say whine. If you put something online, you need to copyright it months prior... three months, at least. After that it becomes increasingly difficult to make any copyright claim. Whiner lost the battle before he had a chance. Better just come up with some different artwork.
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IPHONE ACCESSORIES



Featured Collection:



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iPhone 4S,
16GB, Used,
White**
\$425.00

SALE



**Sprint Apple
iPhone 4, Used,
Black, 8GB**
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SALE

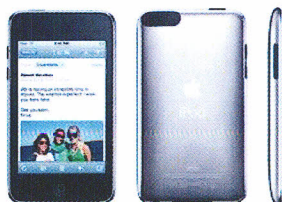


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(Used)**
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SALE



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**Apple iPhone 3GS
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Unlocked**



**Sprint Apple
iPhone 4S, Used,
Black**

SALE

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\$425.00



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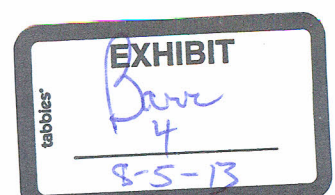
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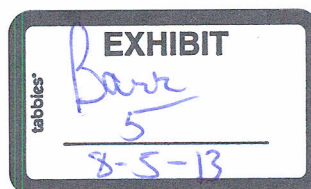
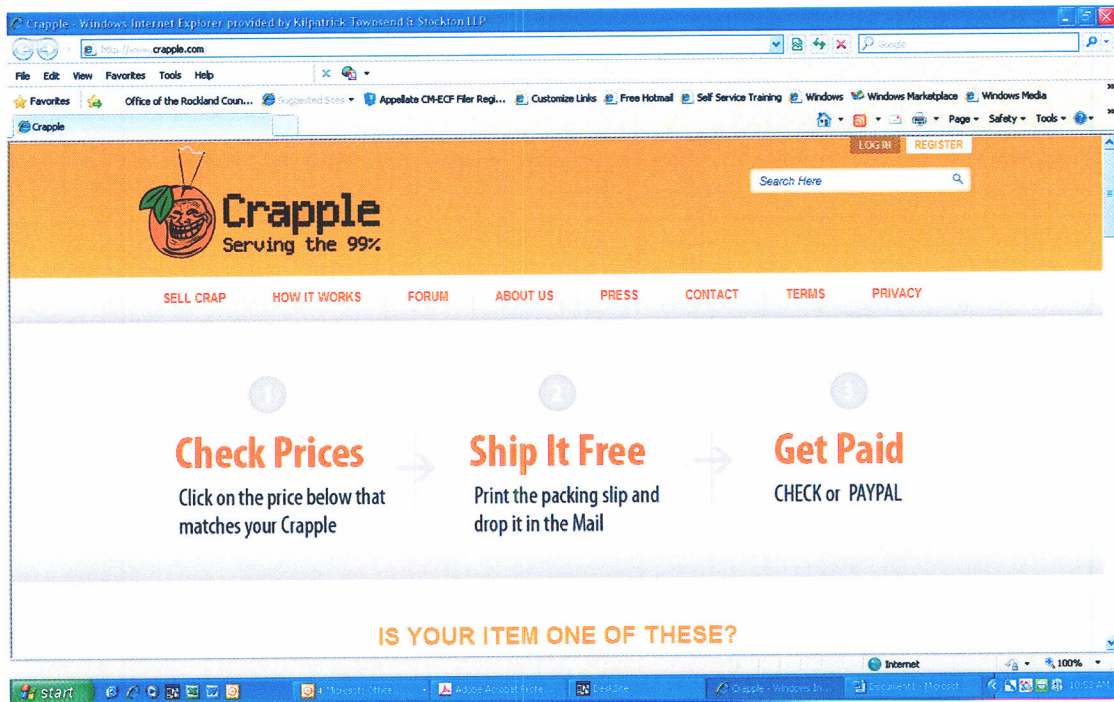
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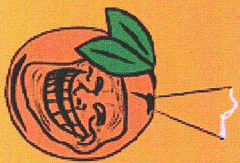
Ninja Entertainment, founded by Milton Barr in 2005, specializes in purchasing new and used electronics and media and reselling them on Amazon.com and eBay.com. Ninja Entertainment has grown to a company with over 30 employees and generating more than \$3 million in revenue for the year 2011. The company's website, **Ninja-Entertainment.com**, was launched on March 1, 2012.

Milt Barr: Milt is the founder of Ninja Entertainment and has been involved with the business for almost a decade; he built this business from the ground up. He has a keen understanding of how eBay and Amazon work. He is also an expert in customer service and most importantly understands the customers Ninja Entertainment caters to. Having managed employees for almost a decade, Milt is a hard driving task manager who has a sharp eye for sizing up employees and getting the most out of them. Milt has also dealt with publicity. Having been previously sued by Mirage Inc for violating their copyright, Milt contacted local media and launched a PR campaign against Konami resulting in Mirage Inc approaching Milt and offering a license to use Konami's copyright for next to nothing.

Daniel Kelman, Esq.: Daniel has been involved with Ninja Entertainment since December 2010, when he retained Ninja Entertainment as a client at the New York law firm where he worked as an associate. In May, Daniel left his New York firm and the practice of law to be Milt's partner at Ninja. Daniel graduated from Brooklyn Law School in 2010 and was admitted to the New York State Bar earlier this year. During his last year of law school he worked as a law clerk at the Manhattan firm which later hired him as a commercial litigation associate. During his time at Ninja, Daniel has studied the workings of the business and gained a keen insight into the market for used electronics.







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Broken : \$30



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SELL IT NOW

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Used : \$310

Broken : \$190

New : \$230

Used : \$167

Broken : \$30



Apple iPad 2 –
WiFi + 3G
(AT&T only)
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New : \$345

Used : \$325

Broken : \$165



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SELL IT NOW

New : \$370

Used : \$350

Broken : \$190

New : \$346

Used : \$254

Broken : \$50



Apple iPad 2 –
WiFi + 3G
(AT&T only)
16GB

SELL IT NOW

New : \$330

Used : \$310

Broken : \$190



Apple iPad 2 –
32GB

SELL IT NOW

New : \$305

Used : \$285

Broken : \$165

New : \$223

Used : \$83

Broken : \$50



Apple iPad 2
WiFi + 3G
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New : \$380

Used : \$360

Broken : \$170



Apple iPad 2 –
16GB

SELL IT NOW

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Used : \$225

Broken : \$145

New : \$223

Used : \$162

Broken : \$50



Apple iPad 2
WiFi + 3G
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SELL IT NOW

New : \$370

Used : \$360

Broken : \$200



Apple iPad 1 –
64GB

SELL IT NOW

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Used : \$185

Broken : \$100



Apple iPad 1 -
32GB

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Used : \$170
Broken : \$105



Apple iPad 1 -
16GB

SELL IT NOW

New :
Used : \$170
Broken : \$95



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(Verizon only)
64GB

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New : \$371
Used : \$313
Broken : \$90



Apple iPhone 4S
(Verizon only)
32GB

SELL IT NOW

New : \$328
Used : \$276
Broken : \$90



Apple iPhone 4S
(Verizon only)
16GB

SELL IT NOW

New : \$279
Used : \$234
Broken : \$90



Apple iPhone 4S
(Sprint only)
64GB

SELL IT NOW

New : \$371
Used : \$313
Broken : \$90



Apple iPhone 4S
(Sprint only)
32GB

SELL IT NOW

New : \$328
Used : \$276
Broken : \$90



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16GB

SELL IT NOW

New : \$279
Used : \$234
Broken : \$90



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Used : \$333
Broken : \$90



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SELL IT NOW

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Used : \$291
Broken : \$90



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SELL IT NOW

New : \$297
Used : \$249
Broken : \$90



Apple iPhone 4
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SELL IT NOW

New : \$177
Used : \$147
Broken : \$50



Apple iPhone 4
(Verizon only)
16GB

SELL IT NOW

New : \$162
Used : \$132
Broken : \$50



Apple iPhone 4
(Verizon only)
8GB

SELL IT NOW

New : \$100
Used : \$82
Broken : \$50



Apple iPhone 4
(Sprint only)
32GB

SELL IT NOW

New : \$177
Used : \$147
Broken : \$50



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(Sprint only)
16GB

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New : \$162
Used : \$132
Broken : \$50



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(Sprint only) 8GB

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New : \$100
Used : \$82
Broken : \$50



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New : \$177
Used : \$152
Broken : \$65



Apple Iphone 3G
(ATT only) 8GB

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New : \$73
Used : \$46
Broken : \$15



Apple Iphone 3G
(ATT only) 16GB

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New : \$125
Used : \$95
Broken : \$15



Apple Iphone 3G
(ATT only) 32GB

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New : \$132
Used : \$102
Broken : \$15



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(ATT only) 8GB

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New : \$100
Used : \$82
Broken : \$50



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Used : \$145
Broken : \$75

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